

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





**ORIGINAL**

**76-1111**

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**United States Court of Appeals  
For the Second Circuit**

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THE UNITED STATES,

*Appellee,*

-v.-

BEN LINDSAY,

*Appellant.*

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**Appendix**

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WILLIAM C. CHANCE, ESQ.

RUBEN SCHOFIELD, ESQ.

Attorneys for Defendant-Appellant

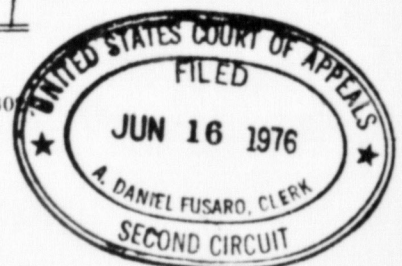
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## A

**BEST COPY AVAILABLE**

DATE	PROCEEDINGS	CLERK'S PLAINTIFF
11-26-74	BOTH DEFTS. - Filed Govt's, notice of readiness for trial on or after 11-26-74.	
4-8-75	BEN LINDSAY - Filed deft's. affirmation & notice of motion for an order dismissing the indictment, ret. 4-18-75.	
4-15-75	BEN LINDSAY - Filed MEMO ENDORSED on deft's. motion to dismiss the indictment. Withdrawn. See stip 4-9-75...R.O.	
4-15-75	BEN LINDSAY - Filed STIP & ORDER withdrawing deft's. motion to dismiss.... Owen, J.	
4-16-75	BEN LINDSAY - Filed Deft's. affirmation & notice of motion for an order dismissing the indictment, ret. 4-25-75.	
5-7-75	BEN LINDSAY & RODNEY BLUME - Filed the following papers received from Magistrate Raby Mag. #74-703:      Docket Entry Sheet (2) Criminal Complaint, S.D.N.Y. Disposition Sheet Financial Affidavit (Blume) Notice of Appearance (Lindsay) of H. Reid, 70 Lafayette St. N.Y.C. 10013      571 0575 Appointment of Counsel (Blume) Robert Blossner 250 B'way, N.Y.C. 10007 571-0805 Appearance Bond (Lindsay) in the sum of \$7,500.00 P.R.E. secured by \$750.00 cash, Receipt #36755 M-19-1-3922.	
5-12-75	Case reassigned from J. Owen to J. Griesa. <i>m/m</i>	
5-23-75	PRELIMINARY CONFERENCE WITH <i>J. Griesa - Judge</i>	
6-27-75	RODNEY BLUME - Filed Judgment and Commitment Order: The Deft is hereby committed to the custody of the Atty General as a Youth Offender for OBSERVATION AND STUDY pursuant to Section 5010(c) of Title 18, U.S. Code, the results of such study to be reported by the Federal Youth Correction Division of the Board of Parole within SIXTY (60) DAYS, at which time the Deft. shall be returned to this Court for imposition of such sentence as the Court may then find to be appropriate. It is adjudged that the above Study and Report is to run CONCURRENTLY with the Study and Report ordered on this date for Indictment 74 CR 1038. Deft is remanded. -- OWEN, J.	



Civil Docket Continuation

## PROCEEDINGS

- 75 RODNEY BLUM-- Filed Judgment And Commitment Order. The Court having committed the Deft. to the custody of the Atty General or his authorized representative for Observation and Study as a YOUTH OFFENDER, pursuant to Sec. 5010(e) of Title 18, U.S. Code, the Court having now received and considered the report, amends its Judgment of June 27, 1975 to the following extent: It is Adjudged that the Deft. is sentenced as a YOUTH OFFENDER, pursuant to Title 18, U.S. Code, Section 5010(b) CHAPTER 402, for treatment and SUPERVISION until discharged by the Federal Youth Correction Division of the Board of Parole as provided in Section 5017(c) of Title 18, U.S. Code. This sentence is to run CONCURRENT with sentence imposed on this date on 74 CR 1038.---OWEN,J.
- 19-75 RODNEY BLUM-- Filed commitment & entered return, Deft. delivered to Warden, Fed. Det. Hdqrs, NYC on 9-5-75.
- 10-75 PRE-TRIAL CONFERENCE BETW B. LINDSAY, & GRIESA, J.
- 25-75 B. LINDSAY - Filed affdvt. of R.L. Garnett, AUSA in support of a writ. Ret. 12-5-75
- 19-75 B. LINDSAY - Deft & atty present...NON-JURY trial begun and concluded..Court finds deft GUILTY as charged...Sentence adjd to 9:30 Jan. 30-76 P.S.I. ordered..Bail cont'd....GRIESA, J....
- 6-75 R. BLUM-- Filed transcript of record of proceedings, dated 6-27-75  
Filed on 74-10-35 R. O
- 10-76 BEN LINDSAY - Filed Judgment (Atty. William Chance, present) Deft. is committed for imprisonment for a period of THREE YEARS and SIX MONTHS, pursuant to Section 3651 of Ti. 18, U.S.C. deft. to serve SIX MONTHS in a jail type Institution, execution of the remainder of sentence is suspended and deft to be placed on Probation for a period of THREE YEARS to commence upon expiration of confinement. Deft. is released on bail pending appeal.....Griesa, J.....Ent. 2-13-76-----
- 9-76 BEN LINDSAY - Filed notice of appeal from judgment of 2-10-76...Copy mailed to deft at 2357 Davidson Ave. Bronx, N.Y. and given to AUSA...

A TRUE COPY  
RAYMOND F. BURGHARDT, C13-2

*[Handwritten signature]*

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INDICTMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE GW  
74 CRIM. 104

UNITED STATES OF AMERICA,

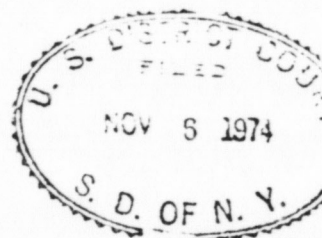
- v -

RODNEY BLUME and  
BEN LINDSAY,

Defendants.

INDICTMENT

74 Cr.



COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of May, 1974, up to and including the 1st day of June, 1974, in the Southern District of New York, RODNEY BLUME and BEN LINDSAY, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 922(a)(1).

2. It was a part of said conspiracy that the defendants, not being licensed importers, manufacturers or dealers would and did unlawfully, wilfully and knowingly engage in the business of dealing in firearms and ammunition.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

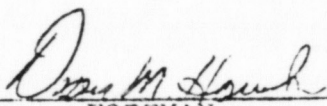
1. On or about the 6th day of May, 1974, the defendant RODNEY BLUME met with James Rodriguez and Rafael Martinez in the Bronx, New York.

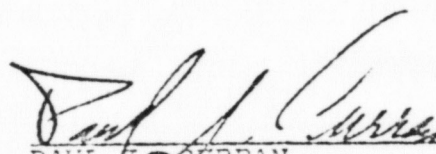
2. On or about the 6th day of May, 1974, the defendants RODNEY BLUME and BEN LINDSAY had a conversation in the vicinity of Franklin Avenue, Bronx, New York.

3. On or about the 6th day of May, 1974, the defendant BEN LINDSAY transferred a .38 caliber revolver to the defendant RODNEY BLUME.

4. On or about the 6th day of May, 1974, Rafael Martinez gave RODNEY BLUME forty-five dollars.

(Title 18, United States Code, Section 371.)

  
FOREMAN

  
PAUL J. CURRAN  
United States Attorney



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

vs. : 74 Cr. 1041

BEN LINDSAY :

Defendant :

----- -x

December 19, 1975,  
3 P.M.

Before:

Thomas P. Griesa,  
District Judge.

Appearances:

THOMAS J. CAHILL, ESQ.,  
United States Attorney for the  
Southern District of New York,  
Ronald Garnett, Esq.,  
Assistant United States Attorney.

WILLIAM C. CHANCE, ESQ.,  
RUBEN SCHOFIELD, ESQ.,  
Attorneys for defendant.

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MR. CHANCE: If your Honor please, may I at this time introduce you to my associate, Mr. Ruben Schofield.

MR. SCHOFIELD: How do you do, your Honor. My pleasure..

THE COURT: Pursuant to the conference that we had recently I am assuming that the defendant waives a jury.

MR. CHANCE: Yes, sir.

THE COURT: I think I better get that on the record.

MR. CHANCE: That is satisfactory with me.

THE COURT: All right, Mr. Lindsay, are you here?

THE DEFENDANT: Yes.

THE COURT: How old are you?

THE DEFENDANT: 47.

THE COURT: I am just going to ask you some questions simply to make you -- I'm sorry, I am going to ask you some questions simply to make sure that you are willing, of your own free will to waive your right to a jury trial. That's all this is directed to. I want to make sure that you know what you are doing and so forth. Do you get me?

THE DEFENDANT: Yes.

BY THE COURT:

Q Do you understand on this charge you would

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2 a right to a trial by a jury of 12 persons; do you under-  
3 stand that you would have that right?

4 A Yes.

5 Q Do you understand that you could not be convicted  
6 unless that jury unanimously found that the government  
7 has proved its case beyond a reasonable doubt; do you  
8 understand that?

9 A Yes, sir.

10 Q Do you understand that by giving up a jury trial,  
11 as the judge, will find the facts and render a verdict  
12 in this case in place of a jury?

13 A Yes, sir.

14 Q Are you willing to have that proceeding that way?

15 A Yes.

16 Q Are you willing to give up a jury trial? Are you?

17 A Yes.

18 THE COURT: Is that acceptable to you, Mr. Chance  
19 and Mr. Schofield?

20 MR. CHANCE: That's satisfactory, Judge.

21 THE COURT: How do you spell your name?

22 MR. SCHOFIELD: S-c-h-o-f-i-e-l-d.

23 THE COURT: All right, we will proceed in that  
24 fashion. You may sit down, Mr. Lindsay.

25 (Witness complied)



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THE COURT: Let's proceed with the government's case.

MR. CHANCE: May I just for the record renew my motion to dismiss the indictment at this time?

THE COURT: Motion denied.

MR. GARNETT: Your Honor, before we begin may I note for the record the 3500 material?

THE COURT: Okay.

MR. GARNETT: 3501 is an interview sheet dated May 30, 1974, of Rodney Blume, 3502 is a record of arrest of Rodney Blume, 3503 is indictment 74 Cr. 1038 naming Rodney Blume as a defendant, 3504 is the portion of the transcript dated April 4, 1975, Rodney Blume's guilty plea to the present indictment 74 Cr. 1041, 3505 is the transcript of the sentence of Rodney Blume dated June 27, 1975, 3506 is the grand jury testimony of Michael Zezima, Alcohol, Tobacco and Firearms dated November 1, 1974, 3507 is an agency report of Special Agent Zezima, not dated, 3508 is the grand jury testimony of Police Officer James Rodriguez, 3509 is the court direct testimony of Detective James Rodriguez, 3510 is a report of an interview of Detective James Rodriguez and 3511 is the transcript of the trial of United States v. Rodney Blume, Charles Rumph and Willie Lee Smith. That's dated February 18, 19th and 20th of 1975.

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Blume-direct

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THE COURT: All right. Are you going to present witnesses?

MR. GARNETT: Yes, your Honor.

THE COURT: Call your witnesses.

MR. GARNETT: At this time the government calls Rodney Blume.

R O D N E Y     B L U M E, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GARNETT:

Q     Mr. Blume, are you presently incarcerated?

A     Yes, I am.

Q     Are you incarcerated pursuant to a conviction in this court?

A     Yes, I am.

Q     Was that in the matter of United States v. Charles Rumph, Willie Lee Smith and Rodney Blume?

A     Yes.

Q     Did you go to trial on those charges?

A     Yes.

Q     They involve essentially conspiracy to deal in firearms and to selling several sawed off shotguns, is that correct?

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Blume-direct

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A Yes.

Q And you were convicted at that trial, were you not?

A Yes.

Q With respect to this case here today you were indicted again, were you not?

A Yes, I was.

Q Did you enter a plea of guilty to that indictment?

A Yes, I did.

MR. CHANCE: Objected to on the ground that the proper foundation has not been laid. He said this case here. I am not sure that that is a proper question, this case here.

MR. GARNETT: All right.

THE COURT: Rephrase it.

Q Are you aware that you have been indicted with Mr. Ben Lindsay--

MR. CHANCE: Objected to. He asked him whether or not he has been indicted with Mr. Ben Lindsay and I do not think that is a proper question of this defendant.

THE COURT: If the defendant understands-- I will overrule the objection. What was the other case? The objection is overruled, but let me go back. The other case was United States v. what?

MR. GARNETT: Rodney Blume, Charles Rumph and Willie



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Blume-direct

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2 Lee Smith and Ronald Blume. There were four defendants,  
3 your Honor.

4 THE COURT: What number?

5 MR. GARNETT: 74 Cr. 1038. This is 74 Cr. 1041.

6 THE COURT: I don't see any substance in that  
7 objection. Go ahead, Mr. Garnett.

8 MR. CHANCE: If I would be able to point it out --

9 THE COURT: If you don't understand any question  
10 asked of you just say you don't understand. If it is a  
11 technical thing or something, just say you don't understand.

12 THE WITNESS: Yes.

13 THE COURT: Go ahead, Mr. Garnett.

14 Q You did proceed to trial and you were convicted  
15 for essentially firearms transactions, is that correct?

16 A Yes, I was.

17 Q Did you also plead guilty to a second indictment?

18 A Yes, I did.

19 Q Were you sentenced in this court pursuant to  
20 those convictions on both cases?

21 A Yes, I was.

22 Q Do you recall that was Judge Owen who sentenced  
23 you?

24 A Yes.

25 Q Were you sentenced as a youth?

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Blume-direct

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A Yes, I was.

Q To a maximum of six years' incarceration, is that correct?

A Yes.

Q With respect to your testimony here today, did you have an understanding with the government? I will rephrase that.

MR. CHANCE: Objected to. He hasn't said he didn't understand it.

Q Do you understand my question?

A In some sense I do and some I don't.

Q What do you understand my question to mean?

A Was anything promised to me, anything like that, no.

MR. CHANCE: I didn't hear what he said, I missed it.

THE COURT: Mr. Reporter, read it back.

(Record read.)

Q Do you recall in your plea before Judge Owen to the second case the government made some representations as to your cooperation.

MR. CHANCE: Objected to as leading.

MR. GARNETT: Your Honor, with respect to the questions I am now asking --



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THE COURT: I think this is a proper thing to do for the government. In other words, I think I should know what promises were made and if it is a matter of record-- so I will overrule that objection.

MR. CHANCE: I believe that I am not quarreling, I never would quarrel with the court, but when he presupposes by the use of the word promise thereby alerting -- if he would ask whether anything was said to him any discussions as related to the plea, it would satisfy me, whether that makes any difference or not, I don't know.

THE COURT: Overruled.

Q You do recall at your sentence the government made representations as to your cooperation?

THE COURT: Is it a matter of record?

MR. GARNETT: It is.

THE COURT: Just read it.

MR. GARNETT: I am trying to find it in the portion of the transcript I have.

MR. CHANCE: Will you tell me what you are reading from, please? May I know what you are reading from, Mr. Garnett?

MR. GARNETT: I haven't read anything yet.

MR. CHANCE: But you are preparing to read from it.

MR. GARNETT: I am looking through the transcript

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Blume-direct

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2 of the plea of guilty dated April 4, 1975. It is a portion  
3 in there. 3504. I direct your attention to page 349.

4 THE COURT: This is what date?

5 THE COURT: April 4, 1975.

6 Before what judge?

7 MR. GARNETT: Judge Owen, your Honor.

8 THE COURT: Just read it.

9 MR. GARNETT: Your Honor, in my short tenure  
10 in this office it has generally been the policy of the  
11 United States not to make any kind of statements at the  
12 time of sentencing, but in view of the defendant's contact  
13 with our office --

14 MR. CHANCE: I object to this aspect of what  
15 your policy was.

16 THE COURT: Please, we are not making any progress.  
17 These things are not going to prejudice your client, believe  
18 me, Mr. Chance.

19 MR. CHANCE: All right.

20 THE COURT: I do want to know what promise was made  
21 and this reading will be the quickest way to get it in.  
22 Okay.

23 MR. GARNETT: But in view of the defendant's  
24 contact with our office I feel compelled to make a statement  
25 at least referring to your Honor that the defendant has



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cooperated fully and candidly with the government and assisted the investigation, continuing investigation of the matters in the indictment before your Honor.

Now, do you recall that statement being made at the time of your plea to the instant indictment?

A Yes, I do.

Q Are there any other promises which have been made to you in connection with your testimony here today?

A No.

Q Mr. Blume, I direct your attention to May of 1974 and I specifically ask you do you recall meeting Robert Preston?

A Yes, I do.

Q Where did you meet Robert Preston?

A At my girlfriend's house.

Q Did you meet him the day before?

A I spoke to him over the phone.

Q What did you speak with him about?

A He asked me if I knew anybody that had guns and I said yes. I asked him could he meet me and he said no, not today, but tomorrow about 5 o'clock. So I said okay, meet me down at my girlfriend's house and I will see you then.

Q This was the following day. Did you meet him?

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Blume-direct

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A Yes, I did.

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Q At your girlfriend's house?

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A Yes, I did.

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Q Where is that located?

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A 145th Street and Willis Avenue.

7

Q Did you have a conversation with him?

8

A Yes, I did.

9

Q Who else was present in that apartment during

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the conversation?

11

A Me, my girlfriend, her father and my children.

12

Q What did you talk about?

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A Well, when I first saw him he asked me did I do

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anything for him the night before and I said yes, I did. I

15

said could you leave now to go pick it up. He said yes, I

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can, and I asked him how was he going to travel and he said

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by car.

18

Q To pick what up?

19

A To go pick up the gun.

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Q So what happened?

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A So he said yes, I do, I have a car downstairs.

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Then I asked him do he know where 168th and Franklin Avenue

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was and he said no. Then I said okay, I will show you the

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way, then. We left the apartment, went downstairs, got into

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the car and he introduced me to two agents that were in the

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car.

Q Let's talk about that. At the time did you know that Mr. Preston or the two men in the car were agents of the government?

A No, I did not.

Q In fact you thought you were dealing with gun dealers, is that correct?

A Yes, I did.

Q So what happened?

THE COURT: So it was Preston and two others in the car?

THE WITNESS: Right.

A I got in after the introduction and then I asked the man that was driving the car did he know the way and he said no, just point it out to me and I will follow the straightest route to go. So I said okay. So we pulled off and I went up Third Avenue. I told him to keep going up Third Avenue, hit the el and I will tell you when to turn off.

THE COURT: Did you finally get to a destination?

THE WITNESS: Yes.

THE COURT: Where was that?

THE WITNESS: 168th and Franklin Avenue.

Q What happened at that place?



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2 A Me and Preston got out of the car, went to  
3 about 168th and Franklin where we met the person who I  
4 went to see, someone whose name was Moms.

5 Q Did you speak with Moms?

6 A Yes, I did.

7 Q Was Preston there with you?

8 A Yes.

9 Q All right, what did you say to Moms?

10 A I asked her did her husband still have the thing  
11 which I had asked for the night before and she said yes,  
12 he did. Then at that time I proceeded to ask her was he  
13 here and she said yes, he is, and that he is in the bathroom  
14 washing up and that I can go ahead in and speak to him about  
15 it.

16 Q Did Moms say that she knew about the guns?

17 A Yes, she did.

18 MR. CHANCE: I object to that as clearly leading,  
19 if your Honor please.

20 THE COURT: Just don't lead him. Let him tell  
21 his own story.

22 MR. GARNETT: All right, your Honor.

23 Q What was the conversation with Moms about?

24 A About the gun.

25 Q Did you go and speak to her husband?

1  
2 A Yes, I did.

3 Q Where was this?

4 A In the bathroom.

5 Q Did you speak with --

6 THE COURT: Don't lead, ask him what happened.

7 MR. GARNETT: I am, I am asking him did he speak  
8 with him.

9 THE COURT: You are asking did he do this or  
10 do that. That's leading.

11 MR. GARNETT: All right, your Honor, since it  
12 was non-jury I was taking certain liberties and I apologize  
13 to the Court.

14 MR. CHANCE: I will grant those liberties as  
15 far as I am concerned except that they do alert the witness  
16 as to what you want him to say.

17 THE COURT: Mr. Chance, I am with you. I think  
18 he ought to stop leading. Now go ahead.

19 Q Did you go to the bathroom?

20 A Ye. did go to the bathroom.

21 Q Did you have a conversation with whoever was  
22 in the bathroom?

23 A Yes, I did. I asked him about the gun.

24 Q And who was this person you were speaking to?

25 THE COURT: Could you excuse me for just a minute?

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Blume-direct

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MR. GARNETT: Yes, your Honor.

(Pause.)

THE COURT: I am ready to resume any time you are.

Q Now, the person with whom you spoke in the bath-  
room, do you see him here in the courtroom today?

A Yes, I do.

Q Where is he seated?

A Over there.

Q What is he wearing?

A He is wearing --

MR. CHANCE: Is he attempting to identify the  
man sitting there?

THE WITNESS: Yes, I do.

MR. CHANCE: I concede that's Mr. Lindsay.

MR. GARNETT: Your Honor, may the record so  
reflect that the witness identified the defendant, Ben  
Lindsay?

THE COURT: It so reflects.

Q Did you have a conversation with the defendant,  
Ben Lindsay?

A Yes, I did.

Q What did you talk about?

A We talked about the pistol.

MR. CHANCE: Objection to what you talked about.



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2 THE COURT: Say what was said about; in other words, sa  
3 what was said in substance, okay?

4 THE WITNESS: Yes.

5 A When I went into the bathroom I asked him about  
6 the gun, did he still have it and he said yes, he did, and  
7 I asked him did he have it with him. He said no, that it  
8 was uptown. I said, well, could we pick it up today and  
9 he said yes, because I told him I had my people out in the  
10 car with me. I asked again how much the price was, because  
11 at that time -- the price of the gun at one time was \$35.

12 THE COURT: Just say what was said.

13 A He told me, yes, that the price of the gun was  
14 \$50 -- I mean, excuse me, \$45 and I said okay, I have the  
15 money with me, there was no hassle about the money at all,  
16 we can go pick it up any time you are ready. He said let  
17 me change my clothes and I will be right out and as he  
18 changed his clothes. We left and then we had met Preston,  
19 he was still talking outside with Moms.

20 MR. CHANCE: Objected to and move to strike.

21 THE COURT: What?

22 MR. CHANCE: I move to strike out the conversation.  
23 He started to say he had with any other without first in-  
24 dicating who was present.

25 THE COURT: Just go back, just a little bit now.



1  
2 A Yes, it was.

3 Q Where you had spoken with Mr. Lindsay was the  
4 bathroom of that after hours place?

5 A Yes.

6 Q When you say you left the bathroom, where did  
7 you go?

8 A Back out to the bar area.

9 THE COURT: What's an after hours place?

10 THE WITNESS: It is like a store front, like. It  
11 is like a place that's not legally a bar, just a social  
12 place, that's all, like a social club or something.

13 MR. CHANCE: A bootleg joint.

14 MR. GARNETT: Thank you, Mr. Chance.

15 Q Were there other persons in this after hours place?

16 A Yes, there were.

17 Q When you say you went back out to join Mr. Preston,  
18 was he speaking with someone?

19 A Yes, he was. He was speaking with the person  
20 referred to as Moms.

21 Q What happened after that?

22 A When I went out, that's when I introduced Mr.  
23 Lindsay and Preston, you know, together and then they  
24 started talking about the same thing that I talked about  
25 in the bathroom.



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Blume-direct

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2 MR. CHANCE: Objected to, your Honor, talking  
3 about the same thing we had talked about.

4 THE COURT: Overruled, go ahead. Well, I think  
5 Mr. Chance is right. Even though it seems repetitious, you  
6 say what was said. Just keep on saying what was said,  
7 all right?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right, go ahead.

10 A I went out and when I introduced them, then they  
11 started talking about the gun and then about this time  
12 another fellow came up behind us -- not behind us, but who  
13 was standing behind the counter at that time next to Moms,  
14 who at that time wanted to buy the gun also.

15 Q The same gun?

16 A The same gun and that's when Preston looked at me,  
17 I looked at him and he told me what was going on, was it a  
18 ripoff or anything and I said no, the people were straight.  
19 There wasn't no ripoff or anything like that at all.

20 Q So what happened?

21 A So then the thing went on -- they was bidding  
22 for the price of the gun, which one was going to pay the  
23 most money for it and then Bob -- Preston looked at me  
24 and said no, he would not pay the price of that gun which  
25 they was asking for then and that's when Moms looked at me

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they said no, let Peewee have the gun, we promised it to him and I had the money all ready and at that time, after everything was over with, I was going to get the gun and everything, we left out, got in the car -- I got in the car with the agents, Preston got in the car with Mr. Lindsay.

Q Before you left the place you had a conversation about guns, didn't you?

MR. CHANCE: Objected to. He has testified to that already.

THE COURT: Sustained.

Q Did you have any further conversation before you left?

A Yes.

Q What was that conversation?

A What I do remember was about two .38 pistols which I do remember and Moms said that she wouldn't sell them because her sons supposedly had died with them and that she would never sell the guns at all and then after that conversation I believe that's when we had left, but they was talking about other guns, but I overheard a little bit.

MR. CHANCE: Objected to, objected to.

Q What?

A Because when Moms, Mr. Lindsay and Preston got together they was talking about other guns they sold, but

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Blume-direct

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2 at that moment I had walked away because they was talking  
3 about a shipment that supposedly, that came in on that  
4 previous week.

5 MR. CHANCE: Objected to as being non-responsive  
6 to any question.

7 THE COURT: No, please.

8 Q So there was conversation about other guns?

9 A Right, because a shipment supposedly came in on  
10 Thursday.

11 Q Would you tell us about that conversation?

12 A Well, at one point we was waiting for Moms because  
13 she supposedly had got in contact with some people that brung  
14 up some guns and she said while we was gone with her husband,  
15 she would try and get in contact with them and for us to  
16 come back during that night.

17 Q The other person who was supposed to have come  
18 up with guns?

19 A Right. Who that was, I don't know.

20 Q What do you mean by came up with guns?

21 A Who came up from the south with a shipment of  
22 guns and we could get all we wanted then.

23 Q Did you subsequently leave the place?

24 A Yes, we did.

25 Q What happened?



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Elume-direct

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2 A I got in the agent's car, Preston got inside  
3 Mr. Lindsay's car and we drove to Shakespeare Avenue in  
4 the Bronx.

5 THE COURT: Read that again, Mr. Reporter.

6 (Record read.)

7 THE COURT: Did you know they were agents?

8 THE WITNESS: No, I did not.

9 Q All right, now, what happened at Shakespeare  
10 Avenue?

11 A I stayed inside the car when we got up there.

12 Q You stayed inside the car?

13 A Yes.

14 Q What car were you in?

15 A The agent's car. I stayed in there. Mr. Lindsay  
16 got out, went upstairs --

17 Q Lindsay got out of what car?

18 A Out of his car and went upstairs, between 5 and  
19 7 minutes, something like that he came downstairs, got back  
20 in the car, Preston called me up to the car, I got out of  
21 the agent's car, went up and that's when they handed me the  
22 gun.

23 You said they handed you the gun. Who handed you the  
24 gun?

25 A Mr. Lindsay.

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Blume-direct

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2 THE COURT: You got out of the car and where  
3 did you go?

4 THE WITNESS: Up to the other car that was in front  
5 of us, Mr. Lindsay's car.

6 THE COURT: Then what happened there?

7 THE WITNESS: At that time they passed me the gun.

8 THE COURT: Who passed you the gun?

9 THE WITNESS: Mr. Lindsay.

10 Q What did you do after that?

11 A I took the gun and that's when Preston told  
12 me to go back and get the money and I took the gun back,  
13 handed it into the car--

14 Q You took it back to the second car?

15 A Right. Put it into the car and I got the money  
16 from the guy who was driving the car then, went back up --

17 Q Was that one of the agents?

18 A Yes.

19 Q All right.

20 A I went back up to the other car--

21 Q You went back to Lindsay's car, is that right?

22 A Yes, and at that time I had five \$10 bills on  
23 me and Mr. Preston didn't have change for any of the tens  
24 at all, so at that time Mr. Lindsay gave me change for one  
25 of the tens and he gave me back the five dollars which I had



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Blume-direct

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2 took and I went back to the agent's car and told him every-  
3 thing was okay and then I went back up and that's when they  
4 were talking about a rifle.

5 Q Who was talking about the rifle?

6 A Preston and Mr. Lindsay because Preston wanted  
7 the rifle but Mr. Lindsay said no, that somebody had already  
8 put a \$75 deposit down on the rifle and that he didn't work  
9 like that. Once somebody gave him a deposit, I keep it for  
10 him, but, you know, next time you can get anything else  
11 you want, but not this one here.

12 Q So what happened after--

13 THE COURT: He was talking to Preston?

14 THE WITNESS: Right.

15 THE COURT: Preston said he wanted a rifle?

16 THE WITNESS: They had discussed a rifle because  
17 he wanted a rifle.

18 THE COURT: Who wanted the rifle?

19 THE WITNESS: Preston wanted the rifle. He said  
20 "Give you twice as much of the money that you asked for  
21 it right now" and Mr. Lindsay said no, that he had already  
22 made the deal for the rifle. Then at this point that's  
23 when I went back and got into the car with the agents and  
24 then a short time after that we left.

25 THE COURT: Okay. I want to have that, if you would

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Blume-direct

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2 read back the answer of the witness.

3 (Record read.)

4 Q Did you have any subsequent conversations with  
5 anyone that you have mentioned thus far?

6 A Later on when we got back to 168th Street, yes.

7 Q You went back to 168th Street?

8 A Yes.

9 Q You were in the agent's car, is that correct?

10 A Yes.

11 Q What happened after that?

12 A We went back into the after hours place to  
13 see that Moms made connection with the people that we  
14 wanted to get guns from, too, and she said no, that she  
15 couldn't reach them during that time.

16 THE COURT: When you say we, who was we?  
17 Who went back into Moms?

18 THE WITNESS: Oh, me and Mr. Preston.

19 THE COURT: Didn't Mr. Lindsay go in?

20 THE WITNESS: No, he did not.

21 THE COURT: Was Mr. Lindsay back at 168th with you?

22 THE WITNESS: Yes.

23 THE COURT: What did he do then?

24 THE WITNESS: He didn't come inside at that time,  
25 then.



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THE COURT: All right, go ahead.

Q Were you able to purchase any guns later that night?

A No, we did not purchase anything that night at all.

Q And what happened after that?

A After she told us that she couldn't get through to them for us to try back tomorrow and then he said okay and then --

THE COURT: Who said? Preston?

THE WITNESS: Mr. Preston-- no, Moms said try back tomorrow and Mr. Preston said okay and then we had a beer and then we left and they drove me back to 145th Street and Willis Avenue and I left.

MR. GARNETT: I have no further questions of this witness at this time, your Honor.

THE COURT: Mr. Chance.

CROSS-EXAMINATION

BY MR. CHANCE:

Q Mr. Blume, was that the only occasion on which you met Mr. Lindsay? Maybe he can make it simpler. Did you know Mr. Lindsay before the evening that you spoke to him?

A Not personally, no.

MR. CHANCE: I have no further questions.



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Rodriguez-direct

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2 THE COURT: All right. You may step down.

3 (Witness excused.)

4 MR. GARNETT: The government calls James Rodriguez.

5  
6 J A M E S R O D R I G U E Z, called as a witness, having  
7 been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GARNETT:

10 Q You were starting to give your shield number.

11 A Shield 405, District Attorney's office, New York  
12 County.

13 Q Detective Rodriguez, how long have you been em-  
14 ployed as a detective?

15 A Over ten years.

16 Q You said you were currently assigned to the  
17 District Attorney's office?

18 A That's correct.

19 Q I direct your attention to May 6, 1974, to  
20 approximately 5:30 P.M. Were you working on that day at  
21 about that time?

22 THE COURT: May what?

23 MR. GARNETT: May 6, 1974.

24 Q At approximately 5:30 and I ask you were you working  
25 on that day and at approximately that time.

2 A That's correct.

3 Q Were you working at that time in an undercover  
4 capacity?

5 A Yes, I was.

6 Q Were you working with anyone else?

7 A Special Agent Ray Martinez of Alcohol, Tobacco  
8 and Firearms Unit and--

9 Q Was there someone else with you?

10 A There was an informant, a confidential informant.

11 Q What was his name?

12 A Robert Preston.

13 Q Special Agent Martinez is with ATF, is that correct?

14 A Yes.

15 Q The District Attorney's office was working  
16 with ATF on this case?

17 A It was a joint investigation, right.

18 Q Did there come a time when you went to 145th Street  
19 and Willis Avenue in the Bronx?

20 A Yes.

21 Q What happened when you arrived at that location?

22 A We parked on the corner of 145th and Willis and  
23 the informant, Robert Preston, got out of the car and he  
24 went for a walk; he went to meet some people. He came  
25 back a short time later with an individual whom he introduced



2 to us as Peewee.

3 Q Now, was this person Peewee subsequently identified  
4 as Rodney Blume?

5 A That's correct.

6 Q Okay.

7 A He introduced us and Peewee stated that although  
8 he himself didn't have any guns he knew a lot of people  
9 that were dealing in pieces, guns, and that he could supply  
10 us. At that point he said we had to go to a location up  
11 on Franklin Avenue where he knew a guy who he mentioned,  
12 Ben, who could supply us with a gun. He got into the car  
13 with us --

14 MR. CHANCE: Excuse me, I didn't hear what he  
15 said, if I may.

16 THE COURT: Sure. Let's have the reporter read  
17 the last.

18 (Record read.)

19 Q Go ahead.

20 A We proceeded in my car up Third Avenue all the  
21 way up to 168th Street and we went into Franklin Avenue and  
22 we parked.

23 Q Now, tell us again who was in the car with you.

24 A In the car was Special Agent Ray Martinez, the  
25 informant, Robert Preston, myself and Rodney Blume. We parked



1 at the corner and the informant and Peewee got out of the  
2 car, walked across the street to what looked to me like  
3 a store front and they were there a short time. Myself and  
4 Agent Martinez, we sat in the vehicle. I don't remember  
5 the exact amount of time they were in there, maybe ten  
6 minutes, five minutes, they came out and they said -- they  
7 had a third male with them, a third individual was with them,  
8 which is the gentleman sitting right there.

9  
10 Q What gentleman are you referring to?

11 A This is the one in the corner.

12 THE COURT: Identifying Mr. Lindsay?

13 MR. CHANCE: Yes.

14 THE COURT: Okay.

15 Q Was he subsequently identified to you?

16 A Yes, Ben Lindsay.

17 Q All right, what happened?

18 A They walked over to a brown Cadillac that was  
19 parked on the corner and Peewee said we have to follow them.

20 MR. CHANCE: Excuse me, it might save some time,  
21 when you say they walked over, I would like to know who  
22 they is.

23 Q Who walked over to the brown Cadillac?

24 A Bob Preston, Peewee and Mr. Lindsay. At that point  
25 Peewee came over to my car and said that we were going to

another location where the gun was. Peewee said I will ride with you and Bob Preston, the informant, said I will ride with Ben. That's exactly what occurred. The informant and Ben got into the Cadillac and myself and Agent Martinez and Peewee followed them in my car where we proceeded to a location on Shakespeare Avenue. I believe the number was 1437. At that location --

THE COURT: This was in the Bronx?

THE WITNESS: That's in the Bronx, yes, your Honor.

THE COURT: All right.

A Ben got out of the car and entered said building, 1437, I could see the number.

THE COURT: Who got out?

THE WITNESS: Mr. Lindsay, Ben Lindsay, the defendant.

THE COURT: And he went into a building?

THE WITNESS: Yes, your Honor.

Q What happened after that?

A He came out a short time later and him and Peewee got in a conversation and eventually Peewee walked over to the car--

Q To what car did he walk over to?

A To my car, the car I was driving, and he handed in through a window the revolver, which he said the cost would be \$45 for the weapon. Agent Martinez, I believe,



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Rodriguez-direct

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yes, gave him \$50, 45 for Ben Lindsay and \$5 for Peewee  
for his services rendered. At that point --

THE COURT: I'm sorry, who gave who what?

THE WITNESS: Agent Martinez gave Pee wee \$50.

Q Peewee is Rodney Blume, right?

A I'm sorry.

Q That's all right.

THE COURT: That was for what?

THE WITNESS: \$45 was for Ben Lindsay for the  
purchase of the gun and \$5 was for Peewee, for Rodney Blume  
for his services, for introducing us and getting us the gun.  
We left the location and met with the backup teams where  
we handed over the revolver to the backups, I believe it  
was Agent Zezima who was backing us up.

Q Zezima?

A Yes.

Q Were they on surveillance?

A They were backing us up.

Q I show you what has been marked as Government's  
Exhibit 1 for identification and I ask you if you can  
identify it.

A Yes.

MR. CHANCE: It's all right to identify it, but  
to snap it.



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Rodriguez-direct

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THE WITNESS: Pardon me?

MR. CHANCE: I keep hearing the click as you are identifying it, that isn't necessary.

THE WITNESS: I'm sorry, I was looking for the serial number. I couldn't remember where it is.

MR. GARNETT: I did offer it.

MR. CHANCE: May I have a voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. CHANCE:

Q How do you know, officer, whether this is the same gun that you saw on that evening or not? How can you tell?

A Very simply by the serial number.

Q Not simply, do you have any way -- you tell by the serial number?

A That's correct.

Q What is the serial number of this gun?

A 23915.

Q Did you make a record of that serial number anywhere?

A Yes.

Q Where?

A There was a piece of paper which was turned in on the original trial with that number on it.

2 Q But you don't see that number on here this morning?

3 A No, but I remember the number.

4 Q When was the last time that you saw this gun?

5 A The last trial for Rodney Blume. I don't recall  
6 how long ago.

7 Q Are you saying this is the first time that you  
8 have seen this gun since the last trial?

9 A That's correct.

10 Q And you now recall what the serial number was?

11 A That's correct.

12 Q How many arrests have you made involving guns  
13 since this arrest?

14 A Quite a few.

15 Q Will you give me the numbers of any five other  
16 guns that you --

17 A Negative.

18 Q You couldn't give me the guns?

19 A No.

20 Q Could you give me the number of any gun in a  
21 previous case that you recall that you know what the number  
22 is?

23 A Yes.

24 THE COURT: Was this recorded in some way?

25 THE WITNESS: It was recorded, yes, your Honor.

2 THE COURT: In other words, when you seized the  
3 gun you at some point recorded it?

4 THE WITNESS: Exactly, your Honor.

5 THE COURT: And you wrote down the number, right?

6 THE WITNESS: Yes.

7 THE COURT: Have you looked at that record before  
8 coming to testify?

9 THE WITNESS: Yes, I did, your Honor.

10 THE COURT: What number does the record show?

11 THE WITNESS: 23915.

12 THE COURT: Is the serial number in the gun  
13 physically?

14 THE WITNESS: That's correct, your Honor.

15 Q Did I understand you to say, officer, that you  
16 had not looked at them or you remembered them since--

17 A No, you misunderstood what I said.

18 Q Would you show me where the serial number is  
19 on this gun?

20 A Sure. There it is.

21 Q The list from which you wrote this serial number,  
22 where is that list?

23 A Where I just read it today?

24 Q Yes.

25 A It was from the documents that Mr. Garnett had in



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Rodriguez-direct

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2 his office.

3 MR. GARNETT: I believe he is referring to either  
4 the report of interview which I have turned over to Mr.  
5 Chance or to 18 USC 3500.

6 Q Officer, you recall this number from having  
7 read it today?

8 A That's correct.

9 Q Before it was read I believe it was shown to you  
10 by the United States Attorney?

11 A Yes.

12 Q And he called to your attention that a number  
13 was on here, is that correct?

14 A No, he just gave me the paper to refresh my  
15 recollection.

16 Q When he gave you the paper did you have any  
17 recollection with respect to what was on the paper?

18 A No.

19 Q He just handed it to you?

20 A Yes, that's all.

21 Q Then did he show you the gun?

22 A No. I have not seen the gun since the last trial,  
23 just now.

24 Q At the time you read it how did you know this was  
25 the same gun?

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Rodriguez-direct

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A I just read the serial number on the gun when I had it in my hands. That's why I was looking so carefully, to make sure it was the same number.

MR. CHANCE: Okay, that is all at this point.

MR. GARNETT: May Government's Exhibit 1 be received, your Honor?

THE COURT: Received.

(Government's Exhibit 1 received in evidence.)

BY MR. GARNETT:

Q To clarify matters, Mr. Rodriguez, have we discussed your testimony here today?

THE COURT: There is nothing that needs clarifying. Let's go.

Q You haven't spoken with me since February, have you?

A That's correct.

THE COURT: What next?

Q What happened after you received the gun?

A We met with the backup teams and we gave the gun to Agent Mike Zezima.

Q That is after you ended all meetings of that day. After you left Shakespeare Avenue what happened?

A You mean with Peewee? I don't understand.

Q With Peewee and Mr. Lindsay.

MR. CHANCE: Objected to, if your Honor please.



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Rodriguez-direct

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2 That is surely leading. He is giving him his name and  
3 everything.

4 THE COURT: No, overruled.

5 Q What happened after you left Shakespeare Avenue  
6 in the company of Mr. Lindsay, Mr. Blume, Mr. Preston  
7 and Agent Martinez?

8 A We returned to Franklin Avenue, I believe, and we  
9 had a conversation for future business of weapons.

10 Q With whom did you have that conversation?

11 A With Peewee, I believe it was.

12 THE COURT: Who returned in your company to  
13 Franklin Avenue?

14 THE WITNESS: It was -- again, to my recollection,  
15 your Honor, I can't exactly remember, but I would say it was  
16 the informant, Peewee, Agent Martinez and myself.

17 THE COURT: What was your conversation, then, again?

18 THE WITNESS: Peewee, if you recall, again, your  
19 Honor, I can't recall exactly, but in substance -- it was  
20 in substance Peewee said Ben had told him he would get more  
21 guns later on, but I can't remember exactly what was the  
22 conversation at this time.

23 Q Did you subsequently leave 168th Street and  
24 Franklin?

25 A Yes, we did.



Q Where did you go from there?

A I believe we went back to 145th Street and Willis Avenue.

Q What happened there?

A We subsequently did other dealings, other operations. I can't remember which ones.

THE COURT: It is not relevant to this case.

Q Other cases you are referring to?

A Yes.

Q Did you subsequently leave the company of Mr. Blume?

A Yes, I did.

Q And where was that?

A At -- geez, I can't recall. I am not going to say until I am positive where it was.

MR. GARNETT: I have no further questions at this time, your Honor.

THE COURT: All right, cross-examine.

MR. CHANCE: If your Honor please, I have no questions of this witness.

(Witness excused.)

MR. GARNETT: Your Honor, if I might have a moment to check and see if another witness has arrived.

THE COURT: Yes.

(Pause)

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Preston-direct

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2 R O B E R T P R E S T O N, called as a witness, having  
3 been duly sworn, testified as follows:

4 MR. GARNETT: Your Honor, before we begin may I  
5 add some 3500 material?

6 THE COURT: Yes.

7 MR. GARNETT: 3512 is a record of arrest of Robert  
8 L. Preston; 3513 is the direct testimony of Mr. Preston  
9 at the trial of United States v. Rodney Blume and 3514 is the  
10 government's file on Mr. Preston.

11 DIRECT EXAMINATION

12 BY MR. GARNETT:

13 Q Mr. Preston, you have been convicted of some crimes,  
14 have you not?

15 A Yes, I have.

16 MR. CHANCE: I will concede his convictions. You  
17 don't have to go into that.

18 THE COURT: All right.

19 Q I will direct your attention to May of 1974.  
20 Were at that time working as a confidential informant for  
21 the District Attorney's office?

22 A I was.

23 Q Did there come a time on May 5th when you had a  
24 telephone conversation with Rodney Blume?

25 A It was.



2 Q What was that conversation?

3 A I had went to 145th Street and Willis Avenue  
4 and went to a man's house known to me as Charlie and I  
5 met a lady there with a little baby, known as Clarita. She  
6 made a telephone call to somebody known to me, at that time  
7 known to me as Peewee and she called me and told me she  
8 spoke to 25 automatics for 35 --

9 THE COURT: What was said?

10 Q What did he say to you and what did you say to him?

11 A I told him I was interested in buying some guns  
12 and I had been told that he could supply me and he said  
13 he and his friend could.

14 Q All right, now, this is on the phone?

15 A Right.

16 Q Did there come a time the next day when you met  
17 Peewee?

18 A We made arrangements to meet the next day at  
19 6 o'clock.

20 Q Did you meet him?

21 THE COURT: At 6 o'clock in the evening?

22 THE WITNESS: Yes, sir.

23 Q Did you meet him?

24 A I did.

25 Q Where was this?



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Preston-direct

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A This was at 145th and Willis Avenue at Charlie's

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house.

4

Q Were you in the presence of any other persons

5

before you met Mr. Blume?

6

A There was a lady known as Clarita, there was a

7

little baby, Charlie and Peewee himself was there.

8

Q I am saying when you went to that area were you

9

in the presence of other persons?

10

A Yes. I was accompanied by Special Agent Martinez

11

and Detective Rodriguez.

12

Q You met Peewee.

13

A Yes.

14

Q Did you have a conversation with him at that time?

15

A Right.

16

Q What was that conversation?

17

A He had said to me that Clarita had spoke to him

18

about me and if he had known a few days earlier he would

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have been able to supply me with what I needed, but at that

20

particular time he could only guarantee me one .38, but his

21

friend on the night before, which he named at that time, he

22

said Ben, had a .25 and a 357, but he wasn't sure he still

23

had them, but he could guarantee me that night a .38.

24

Q All right, then what happened?

25

A We then left the apartment and went to the sidewalk

2 where Detective Rodriguez and Martinez was waiting in the  
3 car. I introduced him to them. After greeting one another  
4 he said he was glad to, you know, hook up with somebody  
5 big and again he assured Martinez that he could supply  
6 one .38 that night, but he wasn't sure about the others  
7 and we then left and went to 168th and Franklin, I believe.

8 Q All right, now, at that location what did you do?

9 A We were supposed to meet a fellow by the name --  
10 known to me at that time as Ben. When we arrived there we  
11 parked on the right-hand side, I believe of Franklin Street,  
12 and we approached Ben standing on the sidewalk and Peewee  
13 introduced me to him and said that this is the fellow  
14 that I spoke to you about last night and asked him did he  
15 have the guns.

16 THE COURT: Who asked?

17 THE WITNESS: Peewee asked Ben.

18 A Ben said he had got rid of I believe everything  
19 but the .38 at that particular time. Now, with that we  
20 went inside where we was joined in the conversation by  
21 another lady known to me only as Moms and there was a sawed  
22 off shotgun discussed at that point and two .38s.

23 THE COURT: Wait a minute, who said what about  
24 the guns? Not just the subject, please.

25 THE WITNESS: Well, when we got inside Peewee



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Preston-direct

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2 introduced me to a lady known to me as Moms and said she  
3 was a very close friend of his and she in turn asked Ben what  
4 was she going to do for us. He said all he had left at that  
5 time was a .38 and he was going to sell it, the .38. She  
6 mentioned something about a .32, but another fellow who I  
7 don't know to this day came in and said he had already  
8 spoken for that .32 and then kind of a bidding went on.  
9 I think he raised the price up to something like \$175. I  
10 went to the car and I asked Detective Rodriguez and he said  
11 it was too much, not to pay that much for it, but Ben said  
12 to me that he had had a sawed off shotgun that he just  
13 had sold --

14 THE COURT: Who said this?

15 THE WITNESS: Ben.

16 THE COURT: Wait a minute. Ben was present?

17 THE WITNESS: Yes. Yes, sir.

18 THE COURT: Was he present in the discussion of  
19 the .32?

20 THE WITNESS: Present was Peewee, Moms, the fellow  
21 that I don't know and Ben was present.

22 MR. CHANCE: I submit that the answer is not  
23 responsive to his Honor's question.

24 THE COURT: Why not?

25 MR. CHANCE: His answer was not responsive to your



question.

THE COURT: I thought it was. At the conversation about the .32, present were Peewee, Lindsay, yourself, the other man and Moms, right?

THE WITNESS: Right.

THE COURT: Now, what do you recall Lindsay saying, if anything?

THE WITNESS: Well, he suggested to Moms that she could also help me out. There was a conversation going on between Moms, Peewee and Ben about somebody had brought some guns from North Carolina and some place and it was my understanding he was telling her to try to find that party in order to get these guns. In the meanwhile we was going to pick up the .38; you know, that she would try to contact his party for me. Then he spoke about -- I asked him again about the sawed off shotgun and he said that he had sold the shotgun to somebody on 116th --

THE COURT: You asked?

THE WITNESS: Ben.

THE COURT: All right.

THE WITNESS: He said he sold it to somebody on 116th Street and the guy had given him a \$75 deposit on it and he wasn't sure that he could get it back, but I should call him back about 11 o'clock that night and he would let me

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Preston-direct

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2 know. If the guy wouldn't give it up I couldn't get it. If  
3 he would give it up it was mine.

4 THE COURT: Let me hear the answer about the  
5 sawed off shotgun.

6 (Record read)

7 Q Did you have any further conversation at that time?

8 A During that time there was a discussion. Peewee,  
9 the best I can recollect, asked Mom something about two .38s  
10 she had and there was some conversation about her son had  
11 died with those two guns in her hands and she said she  
12 couldn't sell those. It was some kind of a memento, something  
13 like that. With that Ben, myself and Peewee went into  
14 the back, where he washed up, changed his clothes and we  
15 was still talking about the shotgun and he said again he  
16 was going to try. With that he--

17 THE COURT: He being?

18 THE WITNESS: Ben.

19 THE COURT: Ben?

20 THE WITNESS: Right.

21 THE COURT: Okay, go ahead.

22 Q What happened after that?

23 A He changed his clothes and we proceeded out of  
24 the club. Moms said to me --

25 THE COURT: Who went out of the club?



THE WITNESS: Peewee, Ben and myself.

She said to me that when we finish -- Moms said to me when I finish with Ben I should stop by and maybe she can contact this guy by then. With that I got in the car with Ben, Peewee got in the car with the two agents and we went to his house.

Q Do you recall where that was?

A It was on Shakespeare Avenue, I believe.

Q Do you recall the address?

A No, I don't recall the address.

THE COURT: To who's house?

THE WITNESS: He told me it was his house.

Q Who told you?

A Ben.

Q Do you see the person you have been referring to as Ben in the courtroom?

A Yes. That's him.

MR. GARNETT: May the record reflect that the witness has identified the defendant.

MR. CHANCE: It is conceded that the man he said is sitting in the courtroom on the right is Ben Lindsay.

Q Is that the man with whom you spoke in May of 1974?

A Yes.

Q What happened at the Shakespeare Avenue location?



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Preston-direct

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A He told me to sit in the car.

THE COURT: Who is he?

THE WITNESS: Ben.

THE COURT: You drove up with Lindsay?

THE WITNESS: Right.

Q Where were the agents at this time?

A They was following.

Q So what happened when you got to Shakespeare Avenue?

A He told me to wait in the car about five or ten minutes and he would go and get the gun that he had for me. With that he left me in the car and he went up and I guess he was gone five to ten minutes and when he came back I motioned for Peewee to come to the car. If my recollection is correct Peewee got into the back of the car, he passed the revolver to Peewee, Peewee in turn went back and repassed it to Detective Rodriguez, Rodriguez passed the money to Peewee, Peewee brought the money back on the outside of the window and gave it to Ben.

Q Peewee gave the money to whom?

A Ben.

Q So what happened at that point?

A Peeweek came back and sat in the car. We had a little small conversation about what we was going to do

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Preston-direct

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2 later on. He said in a matter of a few days he would have  
3 more.

4 THE COURT: Who said this?

5 THE WITNESS: Ben Lindsay.

6 And we exchanged telephone numbers and again  
7 he told me to call him at 11 o'clock that night.

8 Q All right. so what happened?

9 A We then in back to Moms, this club.

10 THE COURT: You and Lindsay?

11 THE WITNESS: Right.

12 I drove back with him in the car. I went in  
13 briefly just for a moment and she said she wasn't able to  
14 reach him.

15 Q Now, you got back there. Did the agents follow  
16 you back?

17 A Yes, they followed me back.

18 Q Was Mr. Lindsay with you?

19 A Yes, I rode in the car with him.

20 Q Did he go into the club with you?

21 A Yes, he did.

22 Q What happened?

23 A I just asked Moms had she reached the party  
24 and she said no, she hadn't reached him. With that I left  
25 the club with Peewee, we seen his brother, Junior, across



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Preston-direct

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2 <sup>CROSS</sup>  
the street, I had a brief conversation with him.

3 Q When you say his brother, is that his twin  
4 brother?

5 A Right. He said he knew about me and he was also  
6 looking for guns for me also. Peewee got back into the car  
7 with myself and the agents and we dropped him off at 145th  
8 and we left.

9 Q Now, did you have subsequent contact with Peewee  
10 with respect to guns?

11 A Yes.

12 Q As a result of that contact did you purchase  
13 several firearms, sawed off shotguns?

14 A Yes, I did.

15 Q Did you purchase any of those guns from Mr.  
16 Lindsay?

17 A No.

18 MR. GARNETT: I have no further questions of  
19 this witness, your Honor.

20 BY THE COURT:

21 Q You purchased them from Peewee?

22 A Yes, sir, through Peewee and other parties.

23 CROSS EXAMINATION

24 BY MR. CHANCE:

25 Q Mr. Preston, what is your occupation?



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Preston-cross

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A I am professional informer.

Q When you say professional informer, what do you mean by that?

A I mean I worked for the government and the City of New York over the last five years as an informant.

Q And you are very accustomed to testifying for the state or the government, is that right?

A No, sir.

Q There was a time when these guns were I believe allegedly paid for, is that correct?

A Yes, sir.

Q This gun.

A Yes, sir.

Q And this gun that was allegedly paid for, where was it paid for?

A It was paid for in the car.

Q And were you present in the car at the time the money was paid?

A Yes, sir, I was.

Q And to whom was the money paid?

A To Mr. Lindsay.

Q At the time it was paid to Mr. Lindsay where was Mr. Lindsay seated in this vehicle?

A Behind the driver's -- behind the steering wheel.

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Q And where were you seated?

A On the opposite side.

Q Next to Mr. Lindsay, is that correct?

A Yes.

Q And the man who paid Mr. Lindsay for the gun  
was he in or outside of the vehicle?

A Outside of the vehicle.

Q In what month was this, sir, do you recall?

A I believe it was May, but I don't recall.

Q I assume that the window was down, is that correct?

A Yes, sir.

Q And you were able to observe the entire trans-  
action, is that correct?

A That's correct, sir.

Q Now, will you describe for his Honor again as to  
what transpired--

Do you know how much money was paid for the weapon?

A Yes, sir.

Q How much was paid?

A My recollection is \$45.

Q Your recollection is \$45?

A Yes, sir.

Q How was the \$45 paid?

A I believe that he had five \$10 bills because there



2 was a hassle about change. He had to go back to the car,  
3 to Rodriguez to change one of the \$10 bills. Ben didn't  
4 have change. He brought 5, so he had to go back to change  
5 one of the tens.

6 Q So then on direct examination when you testified  
7 that you saw the transaction and the money paid you did not  
8 recall at that time that the change had been made, did you?

9 A Yes, sir, I did.

10 Q But you did not so testify, did you?

11 A I don't recall, sir.

12 Q What was the man's name that was the man that  
13 went for the money?

14 A Rodney Blume.

15 Q Do you know Rodney Blume?

16 A I know him now, yes, sir.

17 Q Had you seen Rodney Blume on any occasion prior  
18 to the night of May 6th?

19 A Oh, yes, sir, many, many times.

20 Q Where had you seen Rodney Blume?

21 A In his father-in-law's house, on Fordham Road.

22 Q But you had met him before, that's the only  
23 point I am driving at.

24 A Yes, sir.

25 Q After meeting Rodney Blume had you ever met Ben



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Lindsay before?

A No, sir. I met him the first time when I told you about it.

Q And you met him through Rodney Blume, is that correct?

A Yes, sir.

Q Your meeting him was for the purpose of discussing or getting a gun, is that correct?

A No, sir, not a gun, a quantity of guns.

Q Why when you say a quantity of guns had you ever spoken with Ben Lindsay about any guns?

A No, sir.

Q So when you say a quantity of guns where do you get that information from?

A That was the information I received from Rodney Blume.

Q Rodney Blume?

A Yes, sir.

Q Assuming that Rodney Blume told you that, you assumed it was the truth and you applied that to the defendant here, is that correct?

A That's correct.

Q So it is merely an assumption on your part, is that correct?

2 A Well, he corroborated that later himself, Mr.  
3 Lindsay, to me, that he could supply them.

4 THE COURT: I don't know where we are. What  
5 is your point, Mr. Chance? Just explain this.

6 MR. CHANCE: Well, my point is, Judge, that on  
7 the discussion as related to Lindsay, that it did not go  
8 further, if at all, than one gun or one transaction.

9 THE COURT: Okay, I will review the evidence on  
10 that.

11 MR. CHANCE: Then just a couple of more  
12 background questions of this witness and I will be finished.

13 THE COURT: Take your time.

14 Q You at one time had filed some kind of a complaint  
15 about the treatment you received from the government, is  
16 that correct?

17 A That's correct, sir.

18 Q And then you and the government subsequently  
19 to that made friends and renewed your relationship, is  
20 that right?

21 A No, sir.

22 Q You are presently an informant for the government,  
23 is that correct?

24 A No, sir, not at the present time.

25 Q You have talked to Rodney Blume during the past



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Preston-cross

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2 few days, is that correct?

3 A No, sir.

4 Q You haven't talked to Rodney Blume since the  
5 date you were in the car with him?

6 A No, sir.

7 Q What you testified to now, did you make any notes  
8 or memorandum on your own as relates to this?

9 A No, I do not make notes.

10 Q So you are testifying now from memory, is that  
11 correct?

12 A Yes, sir.

13 Q Now, would you tell me what your purpose is for  
14 testifying at this time on the government's case? At this  
15 time you were an informant, is that correct?

16 A Yes, sir. This was one of the cases that I had made.

17 Q Right.

18 A So I was called as a witness in the case.

19 Q And is your name Preston?

20 A Yes, sir.

21 Q The government has on various times paid you sums  
22 of money for your testimony, is that correct?

23 A Not for my testimony, no, sir.

24 Q Have they paid for your transportation?

25 A Yes, they paid for my transportation.



2 Q Have they paid for your travel?

3 A They paid for my travel, yes.

4 Q Have they paid for your food?

5 A There is a \$36 a day per diem when I come from  
6 out of town.

7 Q Did you pay for your food?

8 A This time I did, sir.

9 Q Where did you come from?

10 A California.

11 Q You came here and they are not paying for your  
12 food?

13 A Not at the present time, no, sir.

14 Q How are you here? Tell me why you are here.

15 THE COURT: Are you getting a flat per day amount?  
16 Did they pay for your plane ticket?

17 THE WITNESS: Well, at the time when the government  
18 called me, it is my understanding they didn't know at the  
19 time I was in California so at the time I am receiving  
20 what they call a New York City per diem. We are still  
21 working on that.

22 THE COURT: How much is that?

23 THE WITNESS: \$20 a day.

24 THE COURT: When you say you are still working  
25 on it, you are still negotiating for more money, is that

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Preston-cross

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correct?

A No, sir, I am not negotiating.

Q When you say you are working on it, you are either getting \$20 or you are not.

A I am getting \$20 a day.

Q Your answer to his Honor when you said you are still working on it -- what did you mean by that?

A I said we will speak about it further.

Q Are you dissatisfied about it?

A Am I personally dissatisfied, yes.

Q And you are to speak on it?

A I am to speak on what I am entitled to to.

Q Are you planning to ask for more?

A I may.

Q When you say you are working on it, it means it is in a negotiable state, is that correct?

A You said it, I didn't say that.

Q You said you are working on it. Tell me what you are working on.

A I don't know what the United States Attorney is going to do.

Q What are you working on, that's what I am trying to find out.

A What I am going to try to establish is that I had

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Preston-cross

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come back from California to testify. The United States Attorney thought I was in New York.

Q And you are only trying to establish your right to the \$20, is that correct?

A I have a right to the \$20, I don't have to establish that.

Q What are you g on? Let me ask you that again, maybe it will come to you. What are you working on?

A In other words, sir, the way the government works--

Q I didn't ask you how the government works because you don't know how it works.

A I believe I do, sir.

Q If you did you wouldn't be sitting there. Tell me what you are working on with the government.

A When you come from out of town you are entitled to \$36 a day not \$20 a day. When you live in New York City you are entitled to \$20 a day. Not only me, all witnesses.

Q When you say you are working on it, you are working on it to establish proof that you came from California rather than staying here, is that correct?

A Not proof, I have proof.

Q Well then, what are you working on?

A I am not working on nothing. I said I am discussing it with the United States Attorney.



Q You didn't say that, you said we are now working on it.

THE COURT: You have been at this a while. Are you discussing it with the United States Attorney to get the 36?

THE WITNESS: I discussed it with him, right.

Q What was the problem you had with NBC?

A Never. NBC tried to help me at one time.

Q What did NBC try to tell you to do?

A Well, at the time I had some problem with the government.

Q What problems did you have with the government? Enumerate them for me.

MR. GARNETT: Your Honor, I would object. We are going far afield here.

THE COURT: I don't know whether we are or not. Overruled.

A At the particular time I was working for a Drug Enforcement Agency and there was a case at 145th Street and Amsterdam Avenue and one of the agents went up not known to me and made an arrest and revealed my identity without me knowing about it and it caused me serious problems and my family also, so in turn --

Q Just hold it right there for a minute.

A All right.

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Preston-cross

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Q When the agent made known your identity you went to NBC, is that right?

A No, I didn't.

Q Who went to NBC?

A I didn't go to the NBC at that time.

Q Did you at any time discuss it with representatives of the National Broadcasting Company?

A Oh, yes, yes.

Q Then your purpose was to be sure your identity was known, is that correct?

A No. It was to bring attention to my problem that I had.

Q Is it or is it not a fact that you are just merely a professional hustler to pick up a buck wherever you can?

A They call me many names, sir.

Q I am asking you what you are. I am not calling you any name.

A I think I am a very skilled undercover agent myself.

Q And this came about how? How did you acquire this skill?

A The knowledge of the streets.

Q How old are you?

A 40.

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2 Q What do you mean by your knowledge of the streets?

3 A Well, by seeing things. I used to own a store on  
4 123rd in Manhattan.

5 Q Did you go to the government on your own voluntarily  
6 or were you involved in some other matter before you became  
7 an informant?

8 A I was recommended to the government by at that  
9 time Mr. Frank Hogan's office.

10 Q Were you at that time involved in any manner  
11 in Mr. Frank Hogan's office?

12 A I was an informant for him, yes.

13 Q When you first became an informer what government  
14 or police problems did you have?

15 A I had a charge pending against me for possession  
16 of stolen property.

17 Q Right. And in exchange for getting out of that  
18 you went to Mr. Hogan or a representative of Mr. Hogan,  
19 is that correct?

20 A No. They came to me.

21 Q And when they came to you they made you a proposition;  
22 they made you an offer and you could not refuse it, is  
23 that correct, or you did not refuse it.

24 A No, I did not refuse.

25 Q From then on after working for Mr. Hogan and Mr.



Hogan paid you, is that correct or Mr. Hogan's office?

A You mean when I no longer had charges against me?

Q Right.

A Yes. I was paid.

Q While you had charges against you you did the thing for Mr. Hogan to get the charges off your back, is that correct?

A That was done in about three weeks.

Q Then you paid for that?

A Yes.

Q Then after he got them off your back he began to pay you in cash, in kind, is that correct?

A It didn't happen the way you said it. They felt I could be of greater service to them with the knowledge I had of the street and they convinced me that I should stay on and work for them. After debating for eight months I decided to do so.

Q And after the eight months was up you went back and let Mr. Hogan know that you were ready, is that correct?

A No, they kept coming to me.

Q Right. The last time they came to you, did you have any matter at that time pending in the District Attorney's office?

A No, sir.

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Preston-cross

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Q What was the nature of the goods in which you were charged with receiving?

MR. GARNETT: Your Honor, I object. We are going far afield.

THE COURT: I think this is really way out.

MR. CHANCE: I was trying to get far enough out, Judge.

THE COURT: Okay. Anything else?

MR. CHANCE: Maybe one other thing and then I will be through.

THE COURT: Okay.

Q What kind of business were you in at the time that you were arrested by Mr. Hogan's office?

A Receiving stolen property.

Q Stealing stolen property?

A Receiving. In other words, a fence I think. You would want the word fence I think.

Q You leave me a lot of latitude but I will pass it in the interests of time.

You became very skilled at it, right? As an undercover agent you were a skilled person, is that correct?

A I believe so.

Q Which makes cross-examination very difficult, is that correct?

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Preston-cross  
redirect

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2 A Well, you said that, sir. I didn't say it.

3 Q But you agree with me, right? Yes or no?

4 A I don't know what you mean by making it difficult.

5 THE COURT: Look, I think that's for me to observe,  
6 please.

7 MR. CHANCE: I am finished.

8 THE COURT: Anything else?

9 MR. GARNETT: Yes, if your Honor please.

10 REDIRECT EXAMINATION

11 BY MR. GARNETT:

12 Q Mr. Preston, how many times have you testified  
13 in court during these five years that you had been an  
14 informant?

15 A This is the third time.

16 Q How many cases have you worked on as an informant  
17 before you testified in February?

18 A 183.

19 Q And you had only testified three times?

20 A Three times.

21 Q Were you subpoenaed to appear here and testify  
22 at this trial?

23 A I was asked to come, yes, sir.

24 Q Do you recall several months ago--

25 MR. CHANCE: Objected to as not having been answered.



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2 THE COURT: Yes, were you subpoenaed or were  
3 you requested in some other way?

4 Q Do you recall being served with a subpoena  
5 several months ago to appear at this trial?

6 A Yes, sir, I do. I still have a copy of it.

7 Q You were asked on cross-examination about your  
8 disagreements with the government.

9 A Yes, sir.

10 Q Do you have a suit against the government  
11 at the present time?

12 A Yes, sir, I do.

13 Q Is there an amount of money involved?

14 A Forty million dollars.

15 Q And that suit is currently pending?

16 A Yes, sir, it is.

17 Q You were also asked about this \$20 a day  
18 witness fee.

19 A Right.

20 Q Are you receiving that fee every day or are  
21 you receiving that fee--

22 A Only when I participate in pre-trial testifying  
23 in court.

24 Q How many times have you received that fee since  
25 you were called about this trial?

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2 A Three times.

3 Q So you received three \$20 witness fees?

4 A Yes.

5 Q You were talking about a discussion you were  
6 having with the government about this California business.

7 A Yes.

8 Q Do you recall being asked about that by Mr.  
9 Chance?

10 A Yes, sir.

11 Q What did the government tell you with respect  
12 to that?

13 MR. CHANCE: Objected to.

14 MR. GARNETT: I believe I can go into that, your  
15 Honor. He was asked about it on cross-examination and I  
16 think I have a right to pursue it.

17 THE COURT: What is the question?

18 MR. GARNETT: Mr. Chance didn't allow me to  
19 finish it.

20 Q What was the government's position with you on  
21 that fee from California?

22 A The government believed --

23 MR. CHANCE: Not for argument sake, Judge,  
24 but I submit that the question has not been put the second  
25 time as it was the first time. I would prefer the

1 rgh

Preston-redirect

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2 stenographer read it back if you were interested in  
3 hearing it.

4 MR. GARNETT: He opened the door, your Honor.  
5 There was testimony of this witness about a conflict  
6 with the government on the amount of money he was due for  
7 being here this time to testify. Now, I think I have  
8 a right to get the witness to clarify what that is.

9 THE COURT: You can ask him about that. What  
10 is your question? Go ahead.

11 MR. GARNETT: Thank you, your Honor.

12 Q Now, you were asked about this California business,  
13 were you not?

14 A Right.

15 Q What did the government tell you about California?

16 A The government's position was that they didn't  
17 know I was in California, they thought I was in New York.

18 Q And you are not being paid any additional  
19 moneys other than the \$20 a day witness fee to which you  
20 are entitled?

21 A Yes, sir.

22 Q And that you only get when you come to this  
23 courthouse, is that correct?

24 A That's correct, sir.

25 Q How many other agencies of the government have



1 rgh

Pre on-redirect

70

2 you worked with in addition to the Alcohol, Tobacco  
3 and Firearms?

4 A The United States Secret Service. Just all of  
5 them, all of them, with the exception of the FBI.

6 Q You were also asked about the discussion you  
7 had with Rodney Blume pertaining to one firearm. Did  
8 you have any conversations with Mr. Lindsay pertaining  
9 to other firearms?

10 A Yes. We discussed a barrel of firearms  
11 that he said that he was expecting at any time.

12 THE COURT: When was that discussion?

13 Q When did you have this discussion?

14 A On the way to his house in the car.

15 THE COURT: What do you mean? What was said?

16 THE WITNESS: Well, he said it wouldn't be  
17 no problem to supply me. In fact, there was somebody--  
18 that's how Moms got involved. Somebody just had came from  
19 South Carolina at that time, but the way I understood it,  
20 it was with a barrel of guns and they was trying to  
21 contact that party. He said to me if he had known a  
22 few days before there would have been no problem in  
23 supplying me that particular night.

24 Q Was there a conversation about supplying guns  
25 at any time other than that day?

1  
2 A Yes. That's why he gave me his telephone  
3 number. He said I should call him at 11 o'clock that  
4 night, he said the guy would not give up the shotgun  
5 but to call him --

6 THE COURT: Who called who that night?

7 THE WITNESS: I called him at 11 o'clock.

8 Q You called Ben Lindsay?

9 A Right.

10 THE COURT: What was said in that call?

11 THE WITNESS: I beg pardon?

12 THE COURT: What was said in that call?

13 THE WITNESS: He said he had been to 116th

14 Street--

15 THE COURT: What did you ask?

16 THE WITNESS: I asked did he have anything  
17 more for me. He said no, he hadn't been able to reach anybody.  
18 He did speak to the party about the sawed off and the  
19 fellow said he needed it desperately and he was a man  
20 of his word and he couldn't get the gun back, so in two  
21 or three days he would have something for me himself.

22 Q On cross-examination you testified that you had  
23 met Rodney Blume many times.

24 A Right.

25 Q Was this before you met Ben Lindsay?

1 A Right. I had never met Mr. Ben Lindsay before.

2 Q I direct your attention again to the first time  
3 you met Peewee Blume.

4 A Right.

5 Q Where was that?

6 A The first time I met him --

7 MR. CHANCE: Objected to if your Honor please,  
8 on the ground that Peewee Blume is not a defendant in  
9 this case.

10 Q Rodney Blume.

11 A The first time I met Rodney Blume was in his  
12 father-in-law's house.

13 Q That's the first time you met him?

14 A Right.

15 Q Didn't you meet Mr. Lindsay the same night,  
16 a short time later?

17 A I met him the next day.

18 Q Who did you meet the next day?

19 A Mr. Lindsay.

20 Q So you were incorrect in saying that you had  
21 seen Rodney Blume many times before you met Ben Lindsay.

22 A Correct. Right.

23 Q So what you are saying is you met Rodney Blume  
24 one day and then the next day you met Ben Lindsay?  
25



1 rgh

Preston-redirect  
recross

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2 A Yes.

3 MR. GARNETT: No further questions.

4 MR. CHANCE: Judge, may I be permitted to  
5 ask him just one other question?

6 THE COURT: Yes, of course.

7 RECROSS EXAMINATION

8 BY MR. CHANCE:

9 Q You and Lindsay went up to the Bronx or when  
10 you allegedly went to the Bronx in one car, is that  
11 correct?

12 A That's correct.

13 Q Then Peewee and the detective were in the other  
14 car, is that correct?

15 A Yes, sir.

16 Q Well, will you explain to me how you observed  
17 the money being passed between the detective and Peewee in  
18 that car.

19 A Because they was parked right behind us.

20 Q And you could see from the car you were in  
21 into the car that they were in?

22 A Yes, sir.

23 MR. CHANCE: That's all.

24 MR. GARNETT: No further questions, your Honor.

25 THE COURT: All right, you may step down.

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2 (Witness excused.)

3 MR. GARNETT: The government calls Michael  
4 Zezima.

5 THE COURT: How many more witnesses do you have?

6 MR. GARNETT: This is the last witness. He  
7 will testify only to the operability of the gun.

8 MR. CHANCE: I will stipulate to the operability  
9 of the gun if I can see it.

10 MR. GARNETT: Sure.

11 (Pause)

12 MR. CHANCE: Judge, the prosecutor is telling  
13 me something I am not too acquainted with. Maybe you can  
14 help us with a view toward the stipulation. He said  
15 all the testimony he needs from his officer--

16 THE COURT: Why don't you let the witness testify.  
17 Maybe it will be easier.

18  
19 M I C H A E L Z E Z I M A, called as a witness, having  
20 been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GARNETT:

23 MR. GARNETT: Your Honor, I hate to interrupt  
24 the testimony, but might I provide one additional piece  
25 of 3500 material to Mr. Chance and that's 3515, which

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Zezenia-direct

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is the entire agency file on the case of United States  
v. Ben Lindsay and Rodney Blume and the case of United  
States v. Rodney Blume, Ronald Blume, Charles Rumph and  
Willie Lee Smith.

THE COURT: All right.

BY MR. GARNETT:

Q Mr. Zezenia, how are you employed?

A I am employed by the Treasury Department as  
a special agent in the Bureau of Alcohol, Tobacco and  
Firearms.

Q How long have you been so employed?

A About ten years.

Q Are you the case agent on the cases I have just  
referred to?

A Yes, sir, I am.

Q I direct your attention to May of 1974. Were  
you actively engaged in the investigation of the case now  
on trial?

A Yes, sir, I was.

Q During that investigation did you receive  
certain firearms?

A Yes, sir, I did.

Q I show you Government's Exhibit 1 in evidence  
and ask you if you can identify it.



1 rgh

ZeZima-direct

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2 A Yes, sir, I do.

3 Q Would you tell us whether that firearm is  
4 a firearm?

5 A Yes, it is a firearm, sir.

6 Q How do you determine that that firearm is a fire-  
7 arm?

8 A By functionally operating the firearm.

9 Q Is that firearm functionally operable?

10 A Yes, sir, it is.

11 Q How do you know it is functionally operable?

12 A By firing the firearm.

13 Q Have you fired that firearm?

14 A I functionally fired the firearm. Would you like  
15 me to show it to you?

16 Q Explain that again.

17 A Functionally firing the firearm by cocking  
18 the trigger and firing it.

19 THE COURT: All right.

20 Q Does that tell you that it is operable?

21 A Yes, sir, it does.

22 Q I mean, the requisite parts of a firearm are  
23 there?

24 A Right, and they are functional.

25 MR. GARNETT: No further questions.

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Zezima-cross

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2 CROSS EXAMINATION

3 BY MR. CHANCE:

4 Q Are you saying today that that weapon is in an  
5 operable condition?

6 A Yes, sir, it is.

7 Q Are you also testifying or can you testify  
8 as to whether or not it was in an operable condition on  
9 May 6, 1975?

10 A Yes, sir, it was.

11 Q What is the basis of that knowledge?

12 A The same test, the functional test.

13 Q Did you perform that test?

14 A Yes, I did.

15 Q Where?

16 A When I received the firearm on the night of  
17 May 6th.

18 Q Where did you receive it?

19 A Let's see, it was in the Bronx.

20 Q And is that the same firearm you received?

21 A Yes, it is.

22 Q What's the serial number of it?

23 A 23915.

24 Q Do you remember it from the night in the Bronx  
25 or do you now remember it from having reviewed some material?

1  
2 Q And you were the person who received it in the  
3 Bronx?

4 A Yes, sir, I was.

5 Q Were you the person who gave it to the custodian  
6 who has kept it all this time?

7 A Right. I put it in the safe of your office.

8 Q And are you the person who removed it from the  
9 safe?

10 A Yes, sir, I am.

11 Q And gave it to Mr. Garnett?

12 A Yes, sir, I am.

13 Q But you never fired that weapon?

14 A No, I did not.

15 Q Do you know any agent that did fire it?

16 A Yes, somebody else did fire it.

17 MR. CHANCE: I have no problem with that, then.

18 THE COURT: All right, anything else?

19 MR. GARNETT: Nothing further, your Honor.

20 THE COURT: You may step down.

21 (Witness excused)

22 MR. GARNETT: At this time, your Honor, the  
23 government rests.

24 THE COURT: The defendant?

25 MR. CHANCE: May I have a short recess, your



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2 Honor?

3 THE COURT: Yes, let's take a short break.

4 (Recess)

5 MR. CHANCE: I would assume that it would be  
6 proper for me now to make any motions that I would have  
7 to make.

8 THE COURT: Certainly.

9 MR. CHANCE: If your Honor please, at this time  
10 the defendant Ben Lindsay moves to dismiss on the ground  
11 that the people have not established a prima facie case  
12 of the defendant nor has the testimony reached that stage  
13 of credibility as to be submitted to his Honor as a  
14 fact finder and, therefore, I believe that at this  
15 point the indictment should be dismissed.

16 THE COURT: Motion denied.

17 MR. CHANCE: If your Honor please, at this  
18 time the defendant Ben Lindsay rests and moves for a directed  
19 verdict of acquittal.

20 THE COURT: That motion is denied. Do the  
21 lawyers wish to sum up?

22 MR. GARNETT: All right, your Honor, if I might  
23 have about five minutes.

24 With respect to the charge in the indictment,  
25 your Honor, there is a one count conspiracy charge against

1 the defendant Ben Lindsay charging him with conspiring  
2 with Rodney Blume others to the grand jury at that time  
3 unknown to violate Title 18, United States Code,  
4 Section 922A(1) which essentially is dealing in firearms.  
5 As has been raised earlier, your Honor, the charge is not  
6 in fact that Mr. Lindsay did deal in firearms, but that  
7 he conspired so to deal in firearms. I have a memorandum  
8 of law which I have prepared for your Honor on the  
9 issue of the elements to be proved. I failed to submit  
10 it to your Honor earlier and I would like to now hand it  
11 up if I might through your law clerk.  
12

13 THE COURT: Sure.

14 MR. GARNETT: Specifically I direct your  
15 attention to page 3, it is a veryshort memo. Now, with  
16 respect to the charge in the indictment the government  
17 need prove three essential elements: One, that during  
18 the period so stated in the indictment Ben Lindsay did  
19 conspire with one Rodney Blume and with others to violate  
20 that section, that is they agreed to deal in firearms  
21 and that Lindsay knowingly and wilfully joined this  
22 conspiracy, that he is knowingly and wilfully agreed  
23 to deal in firearms and that he had at least one overt  
24 act in connection with that. It is clear from the testimony  
25 of Rodney Blume and from Robert Preston that Mr. Lindsay

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did so conspire, that is he had agreed to supply the instant gun, Exhibit No. 1 in evidence, and other guns to Mr. Preston, and of course not knowing that Mr. Preston was at that time an undercover informant. Hence, each of the elements is proved as to the agreement, the parties who were participating in that conspiracy and that one overt act was committed knowingly and wilfully by Mr. Lindsay. There is no requirement that the agreement need have existed for any period of time beyond the particular day that the transactions occurred. Here Mr. Lindsay clearly, unequivocally agreed to sell one gun which did occur and other guns at a later date, although they did not occur and it is clear under the authorities which I have stated, your Honor, that one gun is not sufficient for a conviction of a substantive charge of dealing in firearms in and of itself, but one gun plus holding one's self out to be a dealer in firearms, is sufficient to sustain a conviction for the substantive crime of dealing in firearms. Clearly in this case the proof shows that the elements--

THE COURT: You mean conspiracy.

MR. GARNETT: I am talking about the substantive charge of 922A(1), so if one gun plus holding one's self out to be a dealer is sufficient to convict for a substantive



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2 crime, clearly it is proper proof to substantiate a  
3 conviction plus an agreement on the conspiracy charge  
4 and here that is what the government has charged Mr.  
5 Lindsay with, conspiring to deal in firearms not alleging  
6 that he actually did deal, but that he conspired to do  
7 so.

8 THE COURT: All right, Mr. Chance.

9 MR. CHANCE: I am totally aware of your Honor  
10 having been present and I am totally aware of your ac-  
11 quaintance with our situation here so I won't get into  
12 anything lengthy or equally as lengthy, but I want to  
13 get into one thing, that there was a contention here  
14 that there was a bidding or a negotiation about a gun  
15 in which some other party participated, which in my  
16 opinion would directly negate the conspiracy theory because  
17 the three parties allegedly involved were either bidding or  
18 negotiating as relates to the weapon. However, I believe  
19 in the totality of the evidence that there is no indication  
20 here that Mr. Lindsay was even involved in the conspiracy.  
21 There is no evidence of an agreement by words or by conduct  
22 and, therefore, I believe that the theory of conspiracy  
23 in this matter should fall. Thank you.

24 MR. GARNETT: If I might briefly respond, your  
25 Honor.

2 THE COURT: All right.

3 MR. GARNETT: The evidence clearly shows  
4 that Rodney Blume met with Mr. Lindsay, he discussed  
5 with Mr. Lindsay supplying the guns to Mr. Preston,  
6 or the gun to Mr. Preston, they appeared in the outer  
7 part of this club with Mr. Lindsay, Moms and Peewee and  
8 Preston; they were discussing the supply of one gun  
9 plus other guns, another unidentified male then joined  
10 the group, joined in the discussion for the sale of the  
11 one gun which Mr. Lindsay had already agreed to supply  
12 to Mr. Preston. At that point a bidding situation  
13 occurred which resulted in Moms saying that she had promised  
14 that gun already to Peewee, Rodney Blume, therefore, at  
15 that point the third party left the conversation and the  
16 other parties then left the bar and proceeded to Mr.  
17 Lindsay's house where the transaction was consummated.  
18 So clearly the agreement occurred before this unknown  
19 third party joined the group in an attempt to outbid  
20 Mr. Preston with Mr. Lindsay for the purchase of that .38  
21 firearm.

22 THE COURT: All right. Rule 23C states that  
23 in a case tried without a jury the court shall make a  
24 general finding and shall in addition on request find  
25 the facts specially. Does either side request a finding

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2 of the facts specially?

3 MR. CHANCE: If I understand you, I do not,  
4 your Honor.

5 THE COURT: Does the government?

6 MR. GARNETT: Not at this time, your Honor, no,  
7 in view of Mr. Chance's waiving of that.

8 THE COURT: I find the defendant Lindsay  
9 guilty as charged and I will set a sentencedate now  
10 of 9:30 A.M., January 30th and that would be in room 1505.  
11 Is that convenient for you, Mr. Chance?

12 MR. CHANCE: I believe so, Judge.

13 THE COURT: And Mr. Garnett?

14 MR. GARNETT: Yes, your Honor.

15 THE COURT: Let me just repeat it.  
16 Sentencing will be at 9:30 A.M., January 30th, Friday,  
17 in room 1505. All right?

18 MR. CHANCE: Yes, sir.

19 MR. GARNETT: Yes, sir.

20 THE COURT: A pre-sentence report is ordered and  
21 you cansee that in my office before the sentence date,  
22 Mr. Chance, or Mr. Schofield.

23 7 MR. CHANCE: If your Honor pleases, may I  
24 ask that the defendant be continued on bail pending  
25 sentence?



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2 MR. GARNETT: No objection from the government,  
3 your Honor.

4 THE COURT: Then that will be continued.  
5 Thank you very much.

6 MR. GARNETT: Thank you, your Honor.

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WITNESS INDEX

<u>Name,</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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SENTENCING MINUTES

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

v. :

74 Cr. 1041

BEN LINDSAY, :

Defendant. :

-----x

Before:

HON. THOMAS P. GRIESA,

District Judge

New York, February 10, 1976  
Room 1505 - 9:30 a.m.

APPEARANCES

THOMAS J. CAHILL, Esq.,

United States Attorney for the  
Southern District of New York,

By: RONALD GARNETT, Esq.,  
Assistant United States Attorney

WILLIAM CHANCE, Esq.,

Attorney for Defendant

- - -



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2 (Case called.)

3 MR. GARNETT: Government is ready.

4 MR. CHANCE: Defendant is ready.

5 THE COURT: Does the government have a state-  
6 ment?

7 MR. GARNETT: Not at this time, your Honor.

8 THE COURT: Mr. Chance.

9 MR. CHANCE: If your Honorpleases, the defendant

10 -- Judge, may I interrupt for a minute to introduce Dale  
11 Johnson who has just come in who is a member of our firm.

12 THE COURT: All right, Mr. Johnson.

13 MR. JOHNSON: Good morning, your Honor.

14 MR. CHANCE: This defendant was convicted of  
15 the crime of conspiracy. Mr. Lindsay is 47 years of age.  
16 He owns a truck. He is the father of ten children, two  
17 of which are now residing at the home, and he is totally  
18 repentant. I believe in my opinion that this was an  
19 isolated incident, though the finding of his Honor would  
20 indicate, and I think the statement of the prosecution was  
21 that there was no indication that there was any pattern of  
22 conduct on Mr. Lindsay's part, as he was convicted, and  
23 I believe the minutes will point out -- the basic crime  
24 here was the sale of one gun, although he was convicted of the  
25 crime of conspiracy.

1 rdbbr

2 I would ask your Honor to take into consider-  
3 ation the defendant's, I would say, lack of multiple problems  
4 with the law. I would ask your Honor to take into consider-  
5 ation his family life, and if you do see fit to put the  
6 defendant on probation, I believe that there will not be  
7 a recurrence of this matter. He is totally repentant.  
8 He is married and he does have children and he is gainfully  
9 employed. He tells me that his earnings are about \$200 a  
10 week.

11 If within your wisdom you may be able to find  
12 that the defendant is worthy, based on the probation report,  
13 and you heard the case, I would submit to you and request  
14 of you that the defendant be placed on probation under the  
15 supervision of the Probation Department.

16 THE COURT: Let me ask you this, Mr. Chance:

17 I would like to do what you say, and if  
18 I believed that this was nothing more than an isolated  
19 instance, I would do that. The trouble is, and I looked  
20 over my notes of the trial this morning, and the testimony  
21 on which Mr. Lindsay was convicted showed conversations about  
22 other transactions, and that's obviously a great concern to  
23 me. In other words, if the picture is this: That he  
24 was up at this location with two or three people who were  
25 really involved in supplying guns, then that's a different

1 rdbbr

2 story and I think you recognize that.

3 Now, the conversations, there was a conversation  
4 about a sawed-off shotgun. There wasn't any sawed-off  
5 shorgun present or no transaction but there was testimony,  
6 which I credited, about other guns. The sawed-off shotgun,  
7 testimony by Mr. Preston, and I just want to take a minute  
8 to review that. He said that at some point he asked  
9 Lindsay about a sawed-off shotgun, and he said that Lindsay  
10 said that this had been sold to a stranger, someone on  
11 116th Street and not sure it could be gotten back but he would  
12 try.

13 And then there was a conversation that Preston  
14 testified about where Lindsay suggested to Moms that she  
15 could help Preston contact someone from North Carolina.  
16 There were other conversations, and I won't try to summarize  
17 them.

18 Now, that's what gives me trouble. In other  
19 words, the evidence that I believed indicated a little group  
20 of people up there who were talking about past gun transactions  
21 and future gun transactions.

22 MR. CHANCE: Judge, may I for a moment get  
23 into that?

24 THE COURT: All right.

25 MR. CHANCE: And I want to say this in the



2 beginning: That I am not criticizing the testimony of  
3 the witnesses but I am being as honest and candid with you  
4 as I can be.

5 THE COURT: Sure.

6 MR. CHANCE: You know, we had one fellow who  
7 testified whose name was Preston. He was a professional  
8 informer, and it appeared to me and out of my experience  
9 based on what had transpired, Preston had never seen Lindsay  
10 before this particular day. Preston and one other  
11 witness testified directly opposite of each other. Now,  
12 Preston had spoken to Lindsay concededly about one gun, and  
13 this statement to me, and in my experience, as to the shotgun  
14 and past gun transactions worked so well in making out  
15 precisely what you would have to show in this particular  
16 case. And we had great problems.

17 In the minutes, and I will have that brought to  
18 your attention in a minute, the prosecution testified  
19 and I think the statement was made at some time that there  
20 was not on it information as relates to Lindsay.

21 Now, Mr. Preston, I believe, is the witness  
22 who came in and said Mr. Lindsay was in the washing room  
23 washing up. He came out. The other witness testified  
24 that he saw Mr. Lindsay standing on the street on the  
25 corner. Thirdly, as we attempt to appraise the situation,

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2 it would be my opinion that this was an isolated transaction.  
3 There is no other evidence of guns except by conversation.

4 Now, in my opinion the undercover agent, who  
5 was the witness, could very well said, now, Lindsay, we  
6 want to get guns. We want you to make arrangements. Now,  
7 why buy the one gun as a practical matter? I think  
8 there might have been underlying, and as we deal with wit-  
9 nesses who in a measure earn their living that day, it  
10 gives it a very different light.

11 I have known Mr. Lindsay personally for over  
12 15 years. I can say that he is a truck driver, he has worked  
13 around, and at one time he was a large size truck driver  
14 and how he got a little truck of his own, and being in the  
15 gun business you would not sell a single .38, nor would you  
16 sell it for 35 or \$40, where one of the men said he got  
17 \$5 commission for doing it. He had run across Lindsay by  
18 coincidence. Not that he knew him. People who deal and  
19 purvey in guns will say I can get you a half dozen guns, I can  
20 get you three guns. Getting one '38 would not indicate  
21 a man who is involved in a conspiracy.

22 THE COURT: You didn't just have Preston.  
23 You had Rodney Blume. Blume and Preston testified to  
24 about the same effect.

25 In other words, the discussion about the sawed-

1 rdbbr

2 off shotgun was testified to by Rodney Blume. Then another  
3 conversation that Blume testified about was a conversation  
4 between Lindsay and Preston about a shipment of other guns  
5 and that occurred, according to Blume, before they went  
6 up to Shakespeare Avenue.

7 I would be irresponsible just to write that  
8 off. Now, I don't want Mr. Lindsay to lose his livelihood  
9 any more than you do. But I have to weigh these problems.

10 MR. CHANCE: Let me just make one other ob-  
11 servation. Rodney Blume was involved in another case.

12 I would say singularly the one gun and the other two state-  
13 ments, assuming they were made, could very well have been  
14 puffed. But I realize your concern.

15 Let me suggest this, and I believe Mr. Lindsay  
16 is worthy of it, that we defer the sentence in this matter  
17 in order that you become a bit more satisfied. I am as  
18 an officer of this court satisfied that Mr. Lindsay is not  
19 in the gun dealing business. I am only saying this on  
20 sentence, that we defer the sentence for a period of time  
21 under the proper supervision because I firmly believe and I  
22 am sure -- well, I wouldn't go into that, but I have lived  
23 in the neighborhood and known him for 15 years. He is not  
24 a purveyor. He may be some other things but he is not a  
25 purveyor of guns. He is not a man of violence nor



2 would he participate in it. This is a situation where you  
3 had professional witnesses, one a convicted defendant,  
4 the other a professional witness, which I sometimes call  
5 by other names, that have come up with one gun as past  
6 conversations. It is my concern as to whether or not  
7 present testimony as to past things, are sufficient to hold a  
8 man to account. I am just as concerned about guns as any  
9 person in this town. I live in a jungle and I am aware  
10 of it, and I would not want Mr. Lindsay purveying guns nor would  
11 I be in a community where he purveyed guns.

12 THE COURT: Who is this Moms, do you know?

13 MR. CHANCE: Yes, I know who Moms is.

14 THE COURT: Is she Lindsay's wife?

15 MR. CHANCE: She is Lindsay's wife. You know,  
16 there is mention of the after hour place. That is a thing  
17 of social concern, too.

18 However, I do believe that what Moms had  
19 said was sufficient. She was so involved they would have  
20 brought her to account, they would have done something about  
21 that. The main thing and my concern, and I believe your  
22 concern, too, is whether a man is in a community acquiring  
23 weapons --

24 THE COURT: In other words, this Moms is not  
25 Minnie Boyd?

2 MR. CHANCE: No, sir.

3 THE COURT: Is Minnie Boyd here?

4 (Woman raises hand in courtroom.)

5 MR. CHANCE: Yes, here, is Minnie Boyd.

6 THE COURT: It's a difficult thing. He has  
7 a family and a livelihood and I want him to keep that up.

8 Mr. Lindsay, do you have anything you would  
9 like to say?

10 MR. CHANCE: Maybe if you put it to him by  
11 questions he can answer.

12 THE COURT: Why don't you go over by your  
13 lawyer.

14 (Pause.)

15 MR. CHANCE: Judge, I have asked him to tell  
16 you precisely how he acquired this gun and how he happened  
17 to meet this individual.

18 THE COURT: All right.

19 THE DEFENDANT: Well, Judge, at the time I had  
20 a used furniture, me and a friend of mine had a used furniture  
21 store on 125th Street and Third Avenue. People moving and  
22 want to sell some furniture stuff, we buy. We bought this  
23 furniture, this particular time, by going through it  
24 I found this old gun in it. I didn't figure it could shut  
25 because it is a raggedly shotgun. I had no bullets for it.

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2 I happened to be in the place when this fellow Rodney Blume  
3 came in and asked me about the gun. I told him I had an  
4 old .38. So I asked what he wanted it.

5 He asked me what I wanted for it and  
6 I told him.

7 I have been no gun runner or sold it to nobody.

8 THE COURT: What about those conversations?  
9 Did you have a conversation? You pled not guilty and  
10 I shouldn't be asking you questions and I don't think  
11 I should do this.

12 MR. CHANCE: I will put the questions to him  
13 because I think I understand what you have in mind.

14 (Discussion off the record.)

15 THE COURT: You mean this to be on the record?

16 MR. CHANCE: I am asking him so he can tell  
17 you.

18 THE COURT: Do you mean your questions to be  
19 on the record?

20 MR. CHANCE: Yes, it is all right.

21 THE COURT: Speak up so we can hear you.

22 BY MR. CHANCE:

23 Q Did you have any conversation with Mr. Blume  
24 or any other person there and were you present when Moms  
25 or anybody else discussed guns coming from the south?



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2 A No, I didn't. I wasn't involved in no dis-  
3 cussion about guns from the south.

4 Q Were you present when Mom, Preston and others  
5 were talking in this place?

6 A Only time I was present about discussion of a  
7 gun was when I was standing and he was talking to Mom about  
8 the .38 she told him I had one that I had found. That was  
9 the only discussion I was in about a gun.

10 THE COURT: You want to ask him about the sawed-  
11 off shotgun or don't you? I want to make it clear, he  
12 pleaded not guilty.

13 MR. CHANCE: I think at this time we are trying  
14 to arrive at some disposition and I see no harm in it.

15 THE COURT: All right.

16 BY MR. CHANCE:

17 Q Did you at any time hear Mom and the other  
18 fellow talking about a sawed-off shotgun that will be sold to  
19 a man at 116th Street?

20 A I didn't hear it. I heard Mom told him she  
21 might get him another gun but I didn't hear no words about  
22 no shotgun. There was no discussion.

23 THE COURT: Does he still go down to this  
24 place? I think one help would be if he would just  
25 make -- apparently this arose down at Mom's, this social club.

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2 Now, does he still go down there?

3 THE DEFENDANT: No, I don't go down there.

4 THE COURT: When was the last time you were  
5 down there?

6 THE WITNESS: Last time I was down there about  
7 a week after that I stopped by there. The only reason  
8 I stopped by there because I had been walking, we had been  
9 picking some iron up on the truck and I stopped there to wash  
10 my hands. I had the car parked around the corner around  
11 there. Because I didn't hang around there. I would go  
12 downtown to hang around. I didn't hang around there.

13 THE COURT: Does the government have any  
14 statement?

15 MR. GARNETT: Well, your Honor, you precided  
16 at the trial and you heard the testimony and you heard from  
17 witnesses who took an oath and did, for all intents and  
18 purposes, tell your Honor about prior conversations prior  
19 to the sale of one gun and subsequent conversations Mr. Lindsay  
20 and one Moms and an unknown stranger who at one point while  
21 they were in the social club participated in the negotiation  
22 for the gun that was then available. You heard that  
23 testimony. Absent your Honor's desire to disregard that  
24 testimony, that is the record in this matter.

25 These violations occurred in 1974. The case

2 ended. With regard to the other persons who were  
3 charged, they have been convicted. They have pleaded  
4 guilty and they have been sentenced. Mr. Lindsay is the last  
5 outstanding in the case. I don't contend that Mr. Lindsay  
6 is a danger to the community in any way but neither do I  
7 accept his representations to your Honor now at the sentence  
8 that his involvement is de minimis in terms of these gun  
9 transactions.

10 THE COURT: What did Rodney Blume get?

11 MR. GARNETT: He was sentenced to a maximum of  
12 six years under the Youth Corrections Act. He is now  
13 incarcerated and he faces a maximum of 4 years of absolute  
14 incarceration and subsequent two years conditional release.

15 His brother was placed on probation. His  
16 brother also participated in these transactions. Mr. Charles  
17 Rumph, who sold four sawed-off shotguns and several firearms,  
18 hand guns, was sentenced to one year and a day and there was  
19 a fugitive by the name of Willie Lee Smith. He is still  
20 a fugitive today.

21 THE COURT: Well, now, Rodney Blume, it is  
22 indeterminate, right? How long has he been incarcerated  
23 now?

24 MR. GARNETT: Since the trial, February of 1973,  
25 he has been incarcerated. Judge Owen sentenced him to



2 the maximum under the Youth Correction Act, I believe which  
3 included four years absolute incarceration and two years  
4 following a conditional release.

5 THE COURT: He is going to have to be incar-  
6 cerated for four years?

7 MR. GARNETT: He can be.

8 THE COURT: It is up to the Bureau of Prisons?

9 MR. GARNETT: That's correct. I might also  
10 inform your Honor that Rodney Blume pleaded guilty to the  
11 indictment in which he and Mr. --

12 THE COURT: Was there another case involving  
13 Rodney Blume also?

14 MR. GARNETT: That's correct, your Honor.  
15 Two indictments involving Rodney Blume. One he was indicted  
16 with Mr. Lindsay as his co-defendant, the other there were  
17 four persons, including Mr. Blume, his brother, Mr. Rumph, and  
18 one Willie Lee Smith. The trial proceeded on the indictment  
19 with the four defendants, which resulted in convictions.  
20 Then Mr. Blume subsequently pleaded guilty to the instant  
21 indictment and Judge Owen sentenced him.

22 THE COURT: He pleaded not guilty to the other  
23 one and was tried?

24 MR. GARNETT: That's correct. Subsequent to  
25 that he pleaded guilty to the instant indictment.

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2 THE COURT: What did the other indictment  
3 involve?

4 MR. GARNETT: Sawed-off shotguns and dealing  
5 in firearms.

6 THE COURT: How many actual transactions were  
7 involved?

8 MR. GARNETT: Offhand I recall that there were  
9 four sawed-off shotguns. That also included a conspiracy  
10 count as well. There was a conspiracy charge, and also  
11 several firearms.

12 I might also add, your Honor, that the cases  
13 are related only by Rodney Blume taking the undercover agent  
14 and the informant -- there were three sources, alleged sources  
15 at the time. One was Mr. Lindsay, one was a guy named  
16 Dinkie, and the other third source was Mr. Rumph.

17 THE COURT: Let's see, so you have Rodney Blume  
18 having what we will call an indeterminate treatment term,  
19 which could last up to four years.

20 MR. GARNETT: That's correct.

21 THE COURT: He has now been incarcerated  
22 about a year.

23 MR. GARNETT: That's correct, your Honor.

24 THE COURT: That's on both serving concurrently?

25 MR. GARNETT: Yes, your Honor.

2 THE COURT: Then you have the brother of Rodney  
3 Blume has been given probation.

4 MR. GARNETT: He was given probation.  
5 He role was a minor role. He carried the sawed-off shotguns  
6 in his pants leg to the agents.

7 THE COURT: How about anyone else? I just  
8 don't recall what you told me. Any other defendants con-  
9 victed?

10 MR. GARNETT: Yes, Mr. Charles Rumph. He was  
11 the source of several of those shotguns but based on his  
12 circumstances Judge Owen found that a one year and one  
13 day sentence would be appropriate. He is now currently  
14 serving his one year sentence, I believe at Danbury.

15 MR. CHANCE: Judge, may I indicate that as a  
16 source, as Mr. Garnett mentioned, the source that he is  
17 talking about, the only gun involved was the one sale.  
18 Then Lindsay was indicted on the conspiracy. His source  
19 was the one, and the only sale, which did not cause a  
20 violation but because of the alleged conversation he was  
21 charged with the conspiracy.

22 THE COURT: I will tell you what, Mr. Chance  
23 and Mr. Lindsay, the probation officer has recommended a  
24 split sentence because I think that the thought was there  
25 should be an extended period of probation but there should be



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2 here some relatively short incarceration.

3 Now, I think that is a good recommendation.

4 I don't pretend to make it consistent with the other people that  
5 we have talked about, and it may seem inconsistent. These  
6 other people are serving -- Blume is now serving a sentence  
7 in this case, which he has already been incarcerated a year  
8 for. Now, of course there is the other case and the other  
9 case is something that doesn't involve Mr. Lindsay. So that  
10 distinguishes Rodney Blume, I suppose. On the other hand I  
11 suppose Rodney Blume could question why he is getting a year  
12 or more and Mr. Lindsay gets six months or less. I can't  
13 worry about that.

14 This Rumph, and I can't get into the other  
15 case obviously, but I will say this: I do credit the  
16 testimony at the trial. It was given under oath. It was  
17 the basis for my finding of guilty and it means I just cannot  
18 accept the statements of Mr. Lindsay here.

19 At the same time, I just think that the  
20 probation recommendation is a pretty good one under all the  
21 circumstances.

22 MR.CHANCE: I can appreciate that but I would  
23 like to also say this --

24 THE COURT: I can't see giving a year under  
25 these circumstances because I could not impose probation.

2 I couldn't split the sentence and I think it would be too  
3 much for Mr. Lindsay.

4 MR. CHANCE: I would only like to say that  
5 Mr. Garnett and I wrestled with this case over a period of  
6 time, and I think it was brought to your attention a circum-  
7 stance whereby we might go back to the state courts.  
8 But I did not feel under the circumstances in the state courts  
9 that we might be able, under the statute to find what I  
10 thought was the necessary justice in this case. And  
11 I firmly believe that in spite of the recommendation of the  
12 Board of Parole, that in this case it is an unusual situation  
13 and the only connecting link here is the sale of the one gun  
14 as a source.

15 Secondly, the conversation participated in  
16 by Moms and other people were merely in the presence of  
17 Lindsay.

18 THE COURT: Mr. Chance, if the version of  
19 Mr. Lindsay were true he couldn't be convicted of this  
20 crime, right, Mr. Garnett?

21 MR. GARNETT: That's correct, your Honor.

22 THE COURT: He wasn't convicted of what he has told  
23 me here today. This is what we went through at the time  
24 of the guilty plea. This crime has to do with the business  
25 of dealing. This is why we had the trial. I wouldn't

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2 have held Mr. Lindsay guilty if I had believed that all he did  
3 was to sell a .38 revolver that he had picked up in in a  
4 piece of furniture. I wouldn't have done it.

5 MR. CHANCE: I do not want to get into the  
6 credibility of the trial, but this is what it grew out of.  
7 He has denied any past transactions that they testified to  
8 at which he was present. He admits to selling the gun.

9 THE COURT: I think in view of everything,  
10 and I appreciate your statements, Mr. Chance, and it certainly  
11 is something I have considered very seriously.

12 What it means is that I am imposing what I think  
13 under the circumstances is a moderate sentence. I just  
14 can't express strongly enough, and I think you have expressed  
15 it also, Mr. Chance, that his business of selling guns is  
16 very dangerous to your community. Whether it is one  
17 gun or how many guns. You know, you don't even need to  
18 say what happens with guns. It is very bad.

19 Now, I feel an absolute obligation to impose  
20 some prison term, and I think the situation do well merit  
21 it more than what I am going to give you, and I am going to  
22 give you six months in prison.

23 The reason I am giving you this is because  
24 under the statute it permits me to give a period of prison  
25 followed by a period of probation, and I think that is in the



2 interests of you and the community also.

3 That is the reasoning that I am engaging in.

4 So I will impose sentence as follows:

5 I am imposing sentence under 18 USC 3651, three  
6 years and six months. Six months of that is to be served  
7 in a jail type institution and the execution of the remainder  
8 of the sentence is suspended and the defendant is placed on  
9 probably for a period of three years.

10 MR. CHANCE: Judge, I understand it very well.  
11 However, I would like to ask you if you would entertain  
12 argument from Mr. Johnson as to stay of this execution of  
13 sentence pending appeal.

14 THE COURT: Sure.

15 Is there objection to that?

16 MR. GARNETT: None, your Honor.

17 THE COURT: The government has no objection  
18 to staying the execution of the sentence pending appeal.

19 MR. CHANCE: Thank you very much.

20 THE COURT: I will advise for the record that,  
21 as you know, the defendant has a right to an appeal and if he  
22 cannot afford counsel of his own he can apply to the Court  
23 for appointed counsel.

24 MR. CHANCE: Thank you very much, your  
25 Honor.

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May the recognizance stay the same, your

Honor?

THE COURT: Any objection to that?

MR. GARNETT: No objection, your Honor.

THE COURT: Bail conditions will remain the same.

Let me say this, Mr. Chance: If for any reason you decide not to prosecute the appeal, I want you to notify me and the government and we will arrange a surrender date.

MR. CHANCE: Thank you very much, your Honor.

THE COURT: All right.

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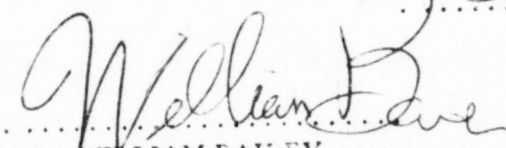
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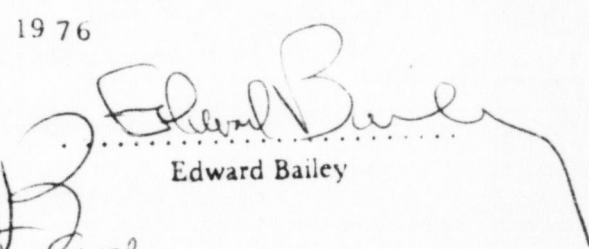
STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 7 day of June, 1966 at No. 1 St. Andrews Place deponent served the within ~~x~~ Appendix upon THE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NY the atty. for appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the atty for res therein.

Sworn to before me,  
this 7 day of June 19 76

  
.....  
WILLIAM BAILEY

Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1973

  
.....  
Edward Bailey

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